TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 150

THE UNITED STATES, PETITIONER

vs.

STONE & DOWNER CO. AND LOWE, DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

PETITION FOR CERTIORARI FILED JUNE 30, 1926
CERTIORARI GRANTED OCTOBER 12, 1926

(31281)

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1 In United States Court of Customs Appeals

2463

THE UNITED STATES, APPELLANT

v.

STONE & DOWNER CO. AND LOWE, DONALD & CO., APPELLEES

Petition for review

To the Honorable the United States Court of Customs Appeals:

Your petitioner, being dissatisfied with the decision of the Board of United States General Appraisers in each of the matters referred to in the annexed Schedule A, respectfully prays your court to review the questions involved therein, and for such relief in the premises as to the court shall seem just. The particulars of the errors of law and fact involved in said decision with which your petitioner is dissatisfied are set forth in the annexed assignment of errors.

Dated, New York, N. Y., October 7, 1924.

ANDREW W. MELLON,
Secretary of the Treasury, Petitioner.
By WM. W. HOPPIN,
Assistant Attorney General, Attorney for Appellant,
641 Washington Street, New York, N. Y.

In United States Court of Customs Appeals

Assignment of errors

The Board of United States General Appraisers has erred as follows:

1. In sustaining the protests herein.
2. In not affirming the assessment of duty herein.
3. In holding that the wool covered by protests 945882/11410, 945938/11385, and 956790/11920 of Stone & Downer Co. is entitled to free entry under paragraph 650 of the tariff act of 1913.

2 4. In not holding such merchandise properly dutiable under the provision in paragraph 18 of the emergency tariff act of May 27, 1921, for "wool, commonly known as clothing wool, including hair of the camel angora goat, and alpaca, but not such wools as are commonly known as carpet wools," at 15 cents per pound, or 30 cents per pound, or 45 cents per pound, as assessed by the collector of customs.

5. In not finding and holding that said wool is commonly known as clothing wool within the meaning of said paragraph 18.

6. In not sustaining the action of the collector of customs in assessing the yarn covered by protest 950777/11585 of Stone & Downer Co. at the additional rate of 45 cents per pound under paragraph 19 of the emergency tariff act of May 27, 1921.

7. In holding that such yarn was dutiable only under the tariff act of 1913.

8. In not holding that said yarn was made from wool commonly known as clothing wool within the meaning of paragraph 18 of said emergency tariff act.

9. In not sustaining the action of the collector in assessing the wool cloth covered by protest 949137/11507 of Lowe, Donald & Co. at the additional rate of 45 cents per pound under paragraph 19 of the emergency tariff act of May 27, 1921.

10. In holding that said cloth was subject to duty only under the tariff act of 1913.

11. In not finding and holding that said cloth was made from wool of the kind provided for in paragraph 18 of said emergency tariff act.

12. In admitting evidence over objection of Government counsel tending to show the commercial meaning or understanding of the term clothing wool as used in said paragraph 18.

13. In permitting the witness, Harding, to answer the following question over objection by Government counsel:

"Q. Mr. Harding, what are the different grades of wool? (R. 36, 37, Suit 2245.)"

14. In permitting the witness, Harding, to testify over objection by Government counsel regarding the commercial status of the different grades of wool. (R. 37, Suit 2245.)

15. In permitting the witness, Harding, to testify over objection by Government counsel concerning the commercial or trade classification of the wools in question. (R. 38, 39, 40, 41, Suit 2245.)

16. In permitting the witness Bennett to testify over objection by Government counsel concerning the classes into which wool is divided. (R. 48, 49, Suit 2245.)

3 17. In permitting the witness Dyson to testify over objection by Government counsel regarding the commercial or trade understanding of the wool in question. (R. 64 et seq., Suit 2245.)

18. In permitting the witness Christie to testify over objection of Government counsel concerning the commercial or trade classifications of wool. (R. 78, 79, 80, Suit 2245.)

19. In permitting the witness Stone to testify over objection by Government counsel regarding the commercial or trade classification of wool. (R. 109, 110, 111, Suit 2245.)

20. In refusing to allow the witness Walker to testify whether Exhibits 1 to 12 showed the presence of Merino blood. (Sten. Min. 19, 20.)

21. In refusing to allow the witness Walker to answer the following question:

"Q. Mr. Walker, as you have come in contact with the producers of wool to the extent of twenty or twenty-five thousand a year, have you found that the meaning which you have given of the term 'clothing wool' is generally recognized as you have stated it?" (S. M. 22, 23.)

22. In refusing to allow the witness Warner to answer the question:

"Q. Do you produce wools which you know as clothing wools?" (S. M. 48.)

23. In denying the motion of Government counsel to strike out the testimony of the witness Warner on Mr. Sharrett's cross-examination relating to commercial distinctions. (S. M. 52, 53.)

24. In not sustaining the objection of Government counsel to questions directed to the witness Warner on cross-examination with respect to the sales according to grades and divisions of wool. (S. M. 56, 57.)

25. In refusing to allow the witness Warner to answer the question:

"Q. Can you state whether or not it is a matter of common understanding amongst producers that the term clothing wool is understood to mean as you have stated all wool used in the making of clothing?" (S. M. 66.)

26. In refusing to allow the witness Warner to answer the following question:

"Q. What is the fact? Based upon your relations with ten or eleven thousand wool producers, will you state whether or not the common understanding of the producers of the meaning of the term clothing wool is as you have defined it?" (S. M. 67.)

27. In refusing allow the witness Warner to answer the following question:

"Q. Based upon your personal experience in your contact with wool growers, is it—state whether it is—a matter of common
4 understanding that the term 'clothing wool' embraces all wools commonly used in the manufacture of clothing, regardless of length of the staple?" (S. M. 68.)

28. In ordering that the answer to the following question propounded to Mr. Moody be stricken out:

"Q. And is your understanding of this term based on your association with other producers in the State of New York?" (S. M. 71, 72.)

29. In permitting the witness Moody to testify over objection by Government counsel that wool is graded into combing and clothing according to the length of staple. (S. M. 78, 79.)

30. In permitting the witness Moody to testify over objection by Government counsel to the commercial distinctions between clothing and combing wool. (S. M. 81, 82, 83.)

31. In permitting the witness Henderson to testify over objection by Government counsel to trade distinctions between combing wool and clothing wool. (S. M. 110, 111.)

32. In refusing to allow the witness Henderson to answer the question:

"Q. Will you say whether that is the understanding of those with whom you have been in association in the wool business?" (S. M. 113.)

33. In permitting the witness Solomon to answer over objection by Government counsel the following question.

"Q. And within the experience you have just narrated, in what class would that wool come?" (S. M. 118, 121, 122.)

34. In permitting the witness Solomon over objection by Government counsel to answer the following question:

"Q. Now, within your understanding, based upon that experience, what kind of wools would Exhibits 1 to 12 be here?" (S. M. 123.)

35. In permitting the witness Solomon to testify over objections by Government counsel how wools such as Exhibits 1 to 12 would be described in certain transactions. (S. M. 124.)

36. In permitting the witness Solomon to testify over objection by Government counsel regarding his commercial experience in wools. (S. M. 128, 129, 130, 131.)

37. In sustaining the objection of counsel for the importer to the Government's offer in evidence of the report of the Committee on Ways and Means marked for identification "Exhibit 3, Protest 949137," etc. (S. M. 99, 140.)

5 SCHEDULE A

Port: Boston.
Subject: Wool—Emergency tariff act.
Decided: September 9, 1924.
Entered: September 10, 1924.

Protest	Importer	Vessel	Date of entry	Entry No.
945882/11410	Stone & Downer Co.	Waikawa	12/16/21	1053
		Sonoma	12/15/21	1054
		Canadian Conqueror	12/30/21	1060
		Canadian Spinner	12/19/21	1064
945938/11385	Stone & Downer Co.	West Wind	11/10/21	955
		Ventura	12/ 9/21	1034
950777/11585	Stone & Downer Co.	Sachem	3/ 6/22	7953
950790/11920	Stone & Downer	Halesius	7/ 3/22	2254
		Halesius	6/30/22	2248
949137/11567	Lowe, Donald & Co.	Bonhetar	6/13/22	2150
		Nitonian	2/13/22	7358

Notice of appearance of counsel

Filed October 10, 1924

[Omitted in printing.]

Before Board of United States General Appraisers

No. 2463

THE UNITED STATES, APPELLANT,

v.

STONE & DOWNER CO. ET AL., APPELLEES

Return of board to order of court

The petitioner above named, having applied to the United States Court of Customs Appeals for a review of the questions of law
6 and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said court having ordered the board to transmit to said court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

A copy of—

1. The protests enumerated in the petition, with the reports of the collector and the United States appraiser thereon.
2. The testimony taken before the board.
3. Exhibit 1 (the record in Suit 2245).
4. The board's decision in question, G. A. 8842 (T. D. 40368), and judgment order.

The entry papers, Exhibits 2 and 3 for identification, and exhibits in Suit 2245 will be forwarded later.

Witness the Honorable Jerry B. Sullivan, president of the board, this 28th day of October, A. D. 1924.

D. P. DUTCHER, *Chief Clerk.*
G. V. O.

Clothing wool—Emergency act.

Protest 945882/11440

BOSTON, *February 11, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 30 cents per pound and 45 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 8 per cent under paragraph 286 or 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

7 3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provisions of paragraphs 18 and 19 of the said Title I of the emergency act.

4. Alternatively with the above claims, as to that portion of said invoices assessed at 30 cents per pound, we claim that if dutiable at all under the emergency act, it should be at only 15 cents per pound under paragraph 18 of said emergency act. As to that portion assessed 45 cents per pound, we claim that if dutiable at all under the emergency act, it should not be subject to more than 15 cents per pound, or if not so, at not more than 30 cents per pound under paragraph 18 of said emergency act.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law, hereby reserving all question of law and fact. Refund should be made of additional duties assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and others marks, numbers, and data below given are given under duress, without prejudice, to aid you and not to limit this protest. The excess is paid under compulsion to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and the demand for the repayment thereof and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Bond No.	Liquidated
Waikawa	12/16/21	1053	1/13/22
Sonoma	12/15/21	1054	1/13/22
Canadian Conqueror	12/30/21	1060	1/27/22
Canadian Spinner	12/19/21	1064	1/31/22

8 Send all notices in reference to this protest to T. S. Sharretts, Esq., 25 West Forty-third Street, New York City.

Respectively,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
50 Congress Street, Boston, Mass.,
Attorneys for Importer.

[Indorsed:] Boston, Mass. Protest. Duty on wool. Received Feb. 11, 1922, customhouse, Boston, Mass. Customhouse, Boston. Paid Mar. 3, 1922. I. E. P. Cashier's office. Office of U. S. appraiser. Received Mar. 4, 1922, Boston, Mass. Naval office, Mar. 3, 1922, Boston. W. H. Entry. Invoice 1053, 1; 1054, 1; 1099, 1; 1064, 1/2. 945882. 11410.

Report of the collector

UNITED STATES CUSTOMS SERVICE.
COLLECTION DISTRICT NO. 4.
Port of Boston, Mass., March 8, 1922.

To the BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, N. Y.

I submit herewith the protest described below with the accompanying invoices and entries, against my assessment of duty at the rate of 30 cents per pound, 45 cents per pound, or other rate or rates on certain wool.

Claimed to be: The claim of the importers is set forth in the inclosed protest.

Returned by the appraised as "Unwashed wool, part of original fleece rejected," and "Scoured wool," and assessed with duty under paragraph 18, act of May 27, 1921, in accordance with the advisory classification of the appraiser. The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants, so far as the time limit for filing protest and payment of fee is concerned.

I inclose herewith the special report of the appraiser, dated the 7th instant, who states that "The merchandise subject of protest, with the exception of one lot, consists of Australian and New Zealand greasy wool, entered at 15 cents per pound, but returned at 30 cents per pound under paragraph 18 of the emergency tariff, being in our opinion, of a class of wool therein provided for, and, inasmuch as it has been increased in value by the rejection of part of the original fleece, carrying the double duty specified. One lot of 173 bales,

9 bond No. 1054, consisting of scoured wool, was entered and returned at 45 cents per pound under said paragraph 18, which classification is believed to be correct."

Respectfully,

W. W. LUFKIN, *Collector.*
By R. G. FRY, *Deputy.*

Vessel	Entered	Bond No.	Liquidated
West Wind	11/10/21	155	12/30/21
Ventura	12/9/21	1034	1/10/22

Send all notices in reference to this protest to Thadeus S. Sharretts, Esq., 25 West Forty-third Street, New York City.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
50 Congress Street, Boston, Mass.,
Attorneys for Importer.

[Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on wool. Received Jan. 26, 1922, Customhouse, Boston, Mass. Customhouse, Boston. Paid Feb. 24, 1922. I. E. P., cashier's office. Naval Office, Feb. 24, 1922, Boston. Office of U. S. Appraiser. Received Mar. 8, 1922, Boston, Mass. W H 955, invoice 1; W H 1034, invoice 1. 945938. 11385.

12 *Report of the collector 11385*

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. 4,
Port of Boston, Mass., March 11, 1922.

To the BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, N. Y.

I submit herewith the protest described below with the accompanying invoices and entries, against my assessment of duty at the rate of 30 cents per pound on certain wool.

Claimed to be: The claim of the importers is set forth in the enclosed protest.

Returned by the appraiser as "Unwashed wool, part of original fleece rejected," and assessed with duty under paragraph 18, act of May 27, 1921, in accordance with the advisory classification of the appraiser. The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

I enclose herewith the special report of the appraiser, dated the 9th instant, who states that "The merchandise subject of protest consists of Australian greasy wool, some entered at 15 cents per pound and some at 30 cent per pound, but all returned at the latter rate under paragraph 18 of the emergency tariff, being, in our opinion of a class of wool therein provided for, and, inasmuch as it has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

Respectfully,

W. W. LUFKIN, *Collector.*
By R. G. FRY, *Deputy.*

No.	Name of importer	Vessel	Date of entry
11385	Stone & Downer Co.	West Wind, Inv. 1 (E955) Ventura, Inv. 1 (E1034) Entered for warehouse.	Nov. 10, 1921 Dec. 9, 1921

The appraiser reports no samples retained.

A return of the invoices and entries is requested.

[Indorsed:] 945938. Received Board of U. S. General Appraisers, Mar. 13, 1922. D. P. Dutcher, chief clerk.

13 *Answer to protest*

JWK/LP.

Wool—Emergency tariff.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., March 9, 1922.

Protest No. 11385: importer, Stone & Downer Co.

Invoice No. Sydney 122; entry No. Bond 955; date, Nov. 12, 1921.

Invoice No. Sydney 1299; entry No. Bond 1034; date, Dec. 10, 1921.

The merchandise subject of protest consist of Australian greasy wool, some entered at 15 cents per pound and some at 30 cents per pound, but all returned at the latter rate under paragraph 18 of the emergency tariff, being, in our opinion, of a class of wool therein provided for, and, inasmuch as it has been increased in value by the rejection of part of the original fleece, carrying the double duty specified.

No samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

945938.

Protest 950977/11585

BOSTON, *April 28, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty at 18 per cent ad valorem and 45 cents per pound additional, or other rate or rates, on certain yarn covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is dutiable at 18 per cent ad valorem only under paragraph 287 of the act of October 3, 1913. We protest against the assessment of 45 cents per pound additional under the emergency tariff act on the ground that the merchandise is not in any way described in paragraphs 18 and 19 of said emergency tariff act.

We claim that you should have assessed the merchandise at 18 per cent ad valorem only under said paragraph 287 of the tariff act of October 3, 1913.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem or, if not so, at 15 per cent ad valorem.

14 The above claims severally and collectively are alternatively made under the paragraphs or sections referred to, both directly and by similitude and component material or otherwise, as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning, or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all question of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data below given are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Entry No.	Liquidated	Marks and Nos.
Sachem	3/6/22	7953	4/1/22	

Send all notices in reference to this protest to Thaddeus S. Sharretts, New York City.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT.
50 Congress Street, Boston, Mass.,
Attorneys for Importer.

(Indorsed:) Boston, Mass. Stone & Downer Co. Protest. Duty on yarn. Naval office, May 25, 1922, Boston. Customhouse, Boston. Paid, May 25, 1922. I. E. P., cashier's office. Received Apr. 28, 1922, customhouse, Boston, Mass. Office of U. S. Appraiser. Received May 29, 1922, Boston, Mass. Entry 7953, invoice 1. 950777. 11585.

15 *Report of the collector*

UNITED STATES CUSTOMS SERVICE.
COLLECTION DISTRICT NO. 4.
Port of Boston, Mass., June 2, 1922.

To the BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, N. Y.

I submit herewith the protest described below with the accompanying invoice and entry, against my assessment of duty at the rate 18 per cent ad valorem and 45 cents per lb. on certain yarn.

The claim of the importers is set forth in the enclosed protest.

Returned by the appraiser as entered and assessed with duty under paragraph 287, act of October 3, 1913, and paragraph 19, act of May 27, 1921, in accordance with the advisory classification of the appraiser. The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

I enclose herewith the special report of the appraiser, dated the 1st instant, who states that "The merchandise subject of protest consists of worsted yarn, entered and returned for duty at the rate of 18 per cent ad valorem under paragraph 287 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants. In the opinion of this office the yarn is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff, and is therefore dutiable as reported.

Respectfully,

W. W. LUFKIN,
Collector of Customs.

No.	Name of importer	Vessel	Date of entry
11585	Stone & Downer Co.	Sachem, Inv. 1 (E7953)	Mar. 6, 1922

Entered for consumption.

The appraiser reports no samples retained.

A return of the invoice and entry is requested.

[Indorsed:] Received, Board of U. S. General Appraisers, June 3, 1922. D. P. Dutcher, chief clerk. 959777.

16 *Answer to protest*

EBO/OCB

Wool yarn—Emergency tariff.

UNITED STATES CUSTOMS SERVICE.
APPRAISER'S OFFICE.
Port of Boston, Mass., June 1, 1922.

Protest No. 11585; importer, Stone & Downer Co.

Invoice No. London 03925; entry No. 7953; date, March 4, 1922.

The merchandise subject of protest consists of worsted yarn, entered and returned for duty at the rate of 18 per cent ad valorem

under paragraph 287 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants.

In the opinion of this office the yarn is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff, and is therefore dutiable as reported.

No samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.
950777.

Protest 955790 11920

BOSTON, *August 8, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with and protest is hereby made against your ascertainment and liquidation of duties and your decision assessing duty at 15 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 8 per cent under paragraph 286, or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provision of paragraphs 18 and 19 of Title I of the emergency tariff act.

17 It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, and 10 per cent ad valorem, or, if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law, hereby reserving all question of law and fact. Refund should be made of additional duties assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data below given are given under duress, without prejudice, to aid you and not to limit this protest. The excess is paid under compulsion to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Bond No.	Liquidated	Marks and Nos.
Halesius	7/3/22	2254	7/24/22	Various as per entries and invoices.
Halesius	6/30/22	2248	7/28/22	
Bonheur	6/13/22	2150	7/28/22	

Send all notices in reference to this protest to Thaddeus S. Sharretts, New York City.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
50 Congress Street, Boston, Mass.,
Attorneys for Importer.

[Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on wool. Office of U. S. Appraiser, Sept. 11, 1922, Boston, Mass. Received Aug. 8, 1922, customhouse, Boston, Mass. Customhouse, Boston. Paid, Sept. 7, 1922. W. M. K., cashier's office. Naval office, Sept. 7, 1922, Boston. W. H. 2254, invoice 1; 2248, invoice 1/2; 2150, invoice 1. 956790. 11920.

18 *Report of the collector*

11920

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Boston, Mass., September 20, 1922.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, N. Y.

SIRS: I transmit herewith the protest, No. 11920, with accompanying invoices and entries of Stone & Downer Co. against the assessment of duty at the rate of 15 cents per pound on certain wool imported by them and entered for warehouse, as follows:

Ex "Halesius," entered July 3, 1922, inv. 1 (E2254).
Ex "Halesius," entered June 30, 1922, inv. ½ (E2248).
Ex "Bonheur," entered June 13, 1922, inv. 1 (E2150).

The claim of the importers is set forth in the enclosed protest.

I enclose herewith the special report of the appraiser, dated the 18th instant, who states that "The merchandise subject of protest

consists of Buenos Aires greasy wool, entered and returned for duty at the rate of 15 and 30 cents per pound, respectfully, under paragraph 18 of the emergency tariff, being, in our opinion, wool of a class therein provided for, and inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

The appraiser reports no samples retained.

The requirements of paragraph N, Section III, of the act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

A return of the invoices and entries is requested.

Respectfully,

E. PERRY,
Special Deputy Collector.

[Indorsed:] 956790. Received, Board of U. S., Sept. 21, 1922. General Appraisers, D. P. Dutcher, chief clerk.

19

Answer to protest

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., September 18, 1922.

JWK/LP
Wool—Emergency tariff.

Protest No. 11920; importer, Stone & Downer Co. Buenos Aires, 1703; W. H. 2248/1; June 30, 1922.

Invoice No., Buenos Aires, 1648; entry No. W. H. 2248/2; date, June 20, 1922; Buenos Aires, 1647; entry No. W. H. 2254; date, July 3, 1922; Buenos Aires, 1556; entry No. W. H. 2150; date, June 13, 1922.

The merchandise subject of protest consists of Buenos Aires greasy wool, entered and returned for duty at the rate of 15 and 30 cents per pound, respectively, under paragraph 18 of the emergency tariff, being, in our opinion, wool of a class therein provided for, and inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified.

No samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

Protest 949137/11507

BOSTON, *March 30, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 35 per cent ad valorem and 4

cents per pound additional, or other rate or rates, on certain woolen goods covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not manufactures of which wool or hair of the kind provided for in paragraph 18 of said Title I of the emergency tariff act.

2. We claim further that said merchandise is not subject to duty under any of the provisions of paragraph 18 or 19 of said Title I or any other provisions of said emergency tariff act.

3. We claim further that the articles in question are provided for by name in the tariff act of 1913 and are therefore excluded from the general term "manufactures" as used in paragraph 19 of said Title I of the emergency tariff act.

4. We claim further that said merchandise is dutiable only under the tariff act of October 3, 1913, at the rate of 35 per cent under paragraphs 290 or 291 of the said tariff act of 1913.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all question of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data below given are given under duress, without prejudice, to aid you and not to limit this protest. The excess is paid under compulsion to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Entry No.	Liquidated	Marks and Nos.
Nitonian	2/13/22	7358	3/7/22	EAM, 1, one bale, and various as per entries and invoices.

Send all notices in reference to this protest to Thaddeus S. Sharretts, New York City.

Respectfully,

LOWE, DONALD & CO.,
By WATERHOUSE & LOCKETT.
50 Congress Street, Boston, Mass.,
Attorneys for Importer.

[Indorsed:] Boston, Mass. Lowe, Donald & Co. Protest. Duty on woolen goods. Received Mar. 30, 1922. Customhouse, Boston, Mass. Customhouse, Boston. Paid Apr. 28, 1922. W. M. K., 21 cashier's office. Office of U. S. Appraiser, received May 2, 1922. Naval office, Apr. 28, 1922, Boston. Entry 7358. Invoice 1. 949137. 11507.

Report of the collector

UNITED STATES CUSTOMS SERVICE.
COLLECTION DISTRICT No. 4.
Port of Boston, Mass., May 6, 1922.

To the BOARD OF UNITED STATES GENERAL APPRAISERS.
641 Washington Street, New York, N. Y.

I submit herewith the protest described below with the accompanying invoice and entry, against my assessment of duty at the rate of 35 per cent ad valorem and 45 cents per pound, on certain woolen goods.

Claimed to be: The claim of the importers is set forth in the enclosed protest.

Returned by the appraiser as entered and assessed with duty under paragraph 288, act of October 3, 1913, and paragraph 19, act of May 27, 1921, in accordance with the advisory classification of the appraiser. The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

I enclose herewith the special report of the appraiser, dated the 4th instant, who states that "the merchandise subject of protest consists of wool cloth returned for duty as entered at the rate of 35 per cent ad valorem under paragraph 288 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants. In the opinion of this office the cloth is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff and is therefore dutiable as reported."

Respectfully,

W. W. LUFKIN,
Collector of Customs.

No.	Name of importer	Vessel	Date of entry
11507	Lowe, Donald & Co.	Nitonian Inv. 1 (E7358)	Feb. 13, 1922

Entered for consumption.
The appraiser reports sample retained.
A return of the invoice and entry is requested.
[Indorsed:] 949137. Received Board of United States General Appraisers, May 8, 1922. D. P. Dutcher, chief clerk.

22 *Answer to protest*

WWH/OCB.
Wool cloth—emergency tariff.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., May 4, 1922.

Protest No. 11507; importer, Lowe, Donald & Co.
Invoice No. Bradford 349; entry No. 7358; date, February 13, 1922.
The merchandise subject of protest consists of wool cloth, returned for duty as entered at the rate of 35 per cent ad valorem under paragraph 288 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants.
In the opinion of this office the cloth is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff and is therefore dutiable as reported.
Sample retained.
Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.
949137.

Before Board of United States General Appraisers

Statement of evidence

NEW YORK, *May 28, 1924.*

Present: General Appraiser McClelland, General Appraiser Brown.

Appearances of counsel

Sharretts, Coe & Hillis, by Edward P. Sharretts, Esq.: Waterhouse & Lockett, by William E. Waterhouse, Esq., attorneys for the importers.
George J. Puckhafer, Esq., and John Francis Strauss, Esq., associate counsel for the importers.

William W. Hoppin, Esq., Assistant Attorney General; Charles D. Lawrence, Esq., special attorney; Fred J. Carter, Esq., special attorney, for the United States.

23 *Colloquy between General Appraiser and counsel*

Mr. SHARRETTS. If your Honors please, the question at issue is as to the status of combing wool under the emergency act, the same issue as was in Suit 2245, decided by the Customs Court of Appeals.

The following has been agreed between Government counsel and ourselves, which I would like to read into the record:

"It is agreed between counsel for the Government and counsel for importers that the wool covered by protests 945882/11410, 945938/11385, and 956790/11920 of Stone & Downer Co. is in every essential and material respect the same as Exhibits 1 to 12, inclusive, in Suit 2245, decided by the United States Court of Custom Appeals in Stone & Downer *v.* United States, 12 Ct. Cust. Appls.; T. D. 40019, decided November 17, 1923.

"It is further agreed that the cloth covered by Protest 949137/11507 of Lowe, Donald & Co. consists of worsted cloth made from worsted yarn and is in every essential and material respect the same as Exhibit 14 in said Suit 2245, and that the yarn covered by Protest 950777/11585 of Stone & Downer Co. consists of worsted yarn and is in every essential and material respect the same as Exhibit 15 in said Suit 2245.

"It is further agreed that the record in said Suit 2245, including the exhibits, shall be made part of the present record, and the record is here which we offer."

Mr. LAWRENCE. That is agreed to, we having submitted the invoices to the appraiser at Boston, who confirms the identity of the merchandise under protest with that in Suit 2245.

(The record in Suit 2245 was admitted in evidence and marked "Exhibit No. 1, Protest No. 949137, etc.," of this date.)

Mr. LAWRENCE. The Government wishes it understood the appraisers' reports in these protests are in evidence.

General Appraiser MCCLELLAND. Is there objection?

Mr. SHARRETTS. No objection.

General Appraiser MCCLELLAND. The appraisers' reports will be admitted in evidence.

Mr. LAWRENCE. Further, the incorporation of the record in Suit 2245 is agreed to, subject to the reservation of objections and exceptions made in that record; in other words, all objections and exceptions.

General Appraiser MCCLELLAND. Of course, it will go in just as it was.

Mr. SHARRETTS. The record speaks for itself. The reporters rest on that record.

General Appraiser MCCLELLAND. Has the Government anything to offer?

Mr. LAWRENCE. Yes, your honor.

24 JASPAR F. WALKER, a witness for the United States, being duly sworn, testified as follows:

By Mr. LAWRENCE:

Q. Mr. Walker, what is your business address?

A. 199 East Gay Street, Columbus, Ohio.

Q. What is your business?

A. I am head of the wool department of the Ohio Farm Bureau Federation and field manager of the Ohio Sheep & Wool Growers' Association.

Q. How long have you performed duties in connection with that association?

A. Since 1918.

Q. And what are the duties performed by you with that association?

A. My principal duty is to meet with the woolgrowers, talk about the various classifications of wool and technical market terms, etc., educating them so that they may understand what the market terms are.

Q. Prior to the time that you became connected with this association, what were you doing?

A. I was a producer of wool.

Q. How many years have you been a producer of wool?

A. About 20.

Q. And in what State?

A. Ohio.

Q. Have you had experience in producing wool in other States?

A. I have not.

Q. Are you familiar with the wools known in other States than Ohio?

A. Yes, sir.

Q. What other States?

A. States adjacent to Ohio—Indiana, West Virginia, and Kentucky.

Q. Are you familiar with the qualities, characteristics, and nature of the various wools that you have produced?

A. I am.

Q. You say you come in contact with producers in Ohio?

A. Yes, sir.

Q. Do you come in contact with producers from other States?

A. I do.

Q. How many States?

A. The States that I have enumerated and also some other States, at conferences, and such meetings as those——

Q. Approximately how many producers do you come in contact with annually?

A. I would say around 25,000 a year.

Q. Are you familiar with the term "clothing wool"?
A. I am.
Q. How long have you known that term?
A. Ever since I have been a producer of wool.
Q. Will you please tell us what the term "clothing wool" means as you understand it?

25 Mr. SHARRETTS. I object to that as immaterial, how this witness understands the term.

General Appraiser MCCLELLAND. Let me see, Mr. Lawrence. You have proved that this gentleman was a producer of wool. You have not shown that he has had any practical experience in dealing in wool.

Mr. LAWRENCE. Well, I have shown that he has for 20 years known the term "clothing wool" as a producer, and I assume that his contact with 25,000 producers a year and his own personal experience otherwise would qualify him to give his understanding of the term "clothing wool" as a producer.

General Appraiser BROWN. Is there something in the court's opinion on which you rely for the introduction of this evidence in the previous case?

Mr. LAWRENCE. The court commented upon the fact that there was a showing in the case that the term "clothing wool" has a common or ordinary use different from what is used among commercial men, and there is some inference there that there should perhaps be information as to how the term is used more commonly perhaps by producing men.

General Appraiser BROWN. Do you seek to draw the inference from that that common meaning may be proved from this character of witnesses?

Mr. LAWRENCE. That and other cases cited by my learned opponent—the Stone & Downer case. The Tiffany case was cited as illustrating the fact that dealers and manufacturers and buyers testified as to whether the commodity was commonly known as jewelry.

General Appraiser MCCLELLAND. I think that is very different from the proposition that you now make. This witness has had no experience in wool except raising wool. I would call him a farmer, but he has a more dignified name for it—wool raiser. He has never sold a pound of wool so far as we know.

Mr. LAWRENCE. Would that be necessary?

General Appraiser MCCLELLAND. And it has not been shown that he has had any experience that would enable him to tell him how wools were classified by wool people who know something about wool.

Mr. LAWRENCE. Do you mean to imply that a man who has been producing wool for 20 years knows nothing about wool or its identity?

General Appraiser McCLELLAND. I mean to imply that the wools that he knows about are the fleeces, and he raises them so far as we know.

26 Mr. LAWRENCE. Fleece is wool.

General Appraiser McCLELLAND. That would not necessarily tell him how wool was classified so as to indicate what part of it was clothing, and what part of it was combing, and what part of it was carpet wool. He might know that a particular kind of sheep raised only carpet wool. I was raised among that kind of sheep myself.

Mr. LAWRENCE. Wouldn't the man who would raise nothing but carpet wool be competent to testify that it was known as such?

General Appraiser McCLELLAND. Yes; that it was wool grown on that kind of sheep.

Mr. LAWRENCE. I am asking the witness, based upon his experience as a producer—the witness who has known the term "clothing wool" for 20 years—to tell us what that is as he understands it. In your honor's dissenting opinion in the Stone & Downer case you said:

"It is well settled that courts may take evidence of the common meaning of words and terms (Robertson v. Salomon, 130 U. S. 414, 415; American Bead Company case and cases therein cited, G. A. 8241; T. D. 37954; 36 Treas. Dec. 251), and therefore, inasmuch as the testimony of the witness did not prove a commercial meaning for the words 'commonly known as clothing wool,' as distinguish from the ordinary meaning what they did say should be considered as indicating the common understanding of those words among the class of people who from experience know their meaning."

General Appraiser BROWN. What did the court say on that phase of it? Can you refer me to the part of the court's opinion that you speak of?

Mr. LAWRENCE. That is on page 36 of T. D. 40019: "There is certainly no showing in this case that the term 'clothing wool' has a common or ordinary use different from its use among commercial men." If you will notice just above there the court remarks upon the Tiffany case: "The uncontradicted testimony of witnesses from various branches of trade, including dealers in jewelry, fancy goods, silverware, and of salesmen in department stores, shows that these articles are not commonly known as jewelry, and are not manufactured in jewelry factories or sold as articles of jewelry."

General Appraiser McCLELLAND. I don't think you have fitted this witness into any one of the classes you refer to.

Mr. LAWRENCE. If dealers and manufacturers of jewelry are competent to testify to the common meaning, why is not a manufacturer or dealer in wool competent to testify to the common meaning? Mr. Walker manufactures wool in the sense that he grows wool.

General Appraiser McCLELLAND. I think at least you ought to show what kind of wool this witness raised.

Mr. LAWRENCE. I will as soon as I get an answer to this question.

27 General Appraiser McCLELLAND. At the present moment I am rather inclined to be against you, but I would like to have you qualify the witness further. That might have some effect upon my ruling.

Mr. LAWRENCE. I intend to take the ruling of the board at this point, and I will then proceed with the examination.

General Appraiser BROWN. Have you anything more to say?

Mr. SHARRETTS. The witness must be placed in some definite category to qualify him to testify. He might give testimony as to commercial understanding. This witness is not qualified in any respect.

General Appraiser McCLELLAND. There is no pretense, as I understand it, of having this witness testify to the commercial end of it.

Mr. SHARRETTS. No; he is not qualified in any way, shape, or manner. Any testimony in any other phase is not material.

Mr. LAWRENCE. I disagree with my friend upon that point. The statute directs that wool commonly known as clothing wool shall be classed under paragraph 18 of the emergency act. Had it been intended that that should be decided upon the basis of commercial testimony it seems to me that Congress would have said "wools, commercially known as clothing wool."

General Appraiser McCLELLAND. Every witness who testified, without a single exception in the other case, said that what was commonly known as clothing wool was a short staple wool.

Mr. LAWRENCE. No; that was the commercial distinction, not the common distinction.

General Appraiser McCLELLAND. I said every witness did testify to that effect.

Mr. LAWRENCE. That was the commercial distinction; I will concede that. Here I am getting back to the community at large, growing wool to find out how they knew the term in common parlance.

General Appraiser McCLELLAND. You would not say that you were reaching the community at large when you had selected out a man who was a farmer, who was raising sheep? Why didn't you call a man in the street?

Mr. LAWRENCE. I may later on. I am calling on the producing end for it. Here is a gentleman who comes in contact with twenty-five thousand growers in a year and he knows what it means.

General Appraiser McCLELLAND. If his knowledge is derived from contact with the producer without any trade experience, he would simply be giving hearsay testimony and quoting what they told him.

28 Mr. LAWRENCE. I am not asking him what they told him. As we grow up we acquire knowledge, and this man who has been raising wool all of his life has become acquainted with the common, popular use of language as applied to wool, with which he is familiar.

General Appraiser BROWN. The situation is a confusing one to my mind. Let's see if I get it correctly. I held that a commercial

witness could not prove common meaning, but I take the effect of the court's decision to be that if you first ask that commercial witness whether the common meaning and the commercial meaning are the same, he then may tell his commercial experience as throwing light on the common meaning. In other words, the effect of the decision was to hold that the expression "commonly known as clothing wool" was what was commonly known in the trade, as there was nobody else but tradesmen who knew anything about it. In that I was reversed on my holding that the commercial testimony could not be had at all.

Now, assuming that is so, and this was a commercial witness, then he would be able under that ruling to testify in that indirect form to common meaning; but the question that disturbs Judge McClelland, and in my own mind, is whether you have brought him within that ruling.

Mr. LAWRENCE. Of course, I am not presenting this witness as a commercial witness in the sense that you speak of commercial witnesses. Commercial men may testify as to what a thing was commonly known as in their trade. Upon the point that the witness may be asked whether the commercial and common meaning are the same, I disagree. I think that that calls for a conclusion of law which can only be answered by the court upon the facts of record. Here we are taking the common meaning of the term, and it seems to me competent to resort to those sources of information where we might find a man familiar with the term outside of the field of commerce and could get expressions of the meaning which they have found given to that term.

General Appraiser BROWN. In other words, you claim that the ruling covers witnesses of this class, too? As I understand, this is a grower whose experience is entirely with growing wool. He does not sell wool.

Mr. LAWRENCE. Of course, he does sell wool. He can't keep it.

General Appraiser BROWN. In his own personal experience he is not a salesman.

Mr. LAWRENCE. Oh, yes.

General Appraiser BROWN. Is this leading up to as to how he sells the wool?

29 Mr. LAWRENCE. I will ask him that.

General Appraiser BROWN. What is the particular question?

Mr. LAWRENCE. I asked him to give his understanding of the term "clothing wool" as he has gathered it in his 20 years' experience as a wool grower.

General Appraiser BROWN. And seller?

Mr. LAWRENCE. No; as a wool grower.

General Appraiser MCCLELLAND. We will allow the question.

Mr. SHARRETTS. My objection is overruled?

General Appraiser MCCLELLAND. Yes.

Mr. SHARRETTS. Exception.

Q. Will you please tell us what the term "clothing wool" means, as you understand it?

A. As a grower, I think of clothing wools as wools that were suitable for clothing. As the question was asked there, I know of it to-day as intimately connected with the selling organization, as the short-fiber wools, in the commercial sense.

Q. To the producer, you say, the term as you understand it has been applied to what?

Mr. SHARRETTS. One moment; he does not quote the witness; he does not quote him correctly, and he is evidently trying to change his answer.

General Appraiser BROWN. You are entitled to great latitude, if the answer is incorrect, on cross-examination.

Mr. SHARRETTS. The witness did not say how it had been applied.

General Appraiser MCCLELLAND. Do you desire to change your answer?

The WITNESS. No.

Q. In other words, then, is it a fact that the meaning of the term "clothing wool" to the producer is different from that as known to the seller?

General Appraiser MCCLELLAND. Oh, Mr. Lawrence, that won't do.

Mr. SHARRETTS. I object to Mr. Lawrence testifying.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. Yes.

Q. Now, have you examined the exhibits from Nos. 1 to 12, inclusive, in this case?

A. I have.

Q. Will you please state whether or not such wools are within your understanding of the term "clothing wool" as a producer, including your experience?

Mr. SHARRETTS. That is objected to as leading.

Mr. LAWRENCE. It does not suggest the answer.

General Appraiser MCCLELLAND. What wools?

30 Mr. LAWRENCE. Exhibits 1 to 12, inclusive, I directed his attention to. I have asked him to state whether or not those wools are within the term "clothing wool" as he understands it as a producer.

A. They are.

General Appraiser MCCLELLAND. Did you examine each of those samples?

The WITNESSS. I did.

General Appraiser MCCLELLAND. Did you find them all to be short-staple wools?

The WITNESS. No; I did not.

General Appraiser MCCLELLAND. How do you reconcile that answer with your previous answer that clothing wool was short-staple wool?

Mr. LAWRENCE. That was his answer as a dealer, your Honor.

The WITNESS. The question asked me—the last question—as I understand it, was as a producer, as the ordinary wool producer using that type of wool, whether he would think of it as clothing wools or wools not suitable for clothing purposes.

General Appraiser MCCLELLAND. Did you find these samples to be of short-staple or long-staple wool?

The WITNESS. I found one sample that was very defective in staple.

Q. Do you remember the number of that sample?

A. No. 5.

Q. Are you familiar with the qualities of wool which adapt it for combing?

A. I am.

Q. How have you acquired that knowledge of the fitness of wool for combing?

A. Through contact with mills and our selling organization.

Q. In your judgment is Exhibit 5 commercially adapted for combing?

Mr. SHARRETTS. That is objected to. I don't think the witness has been qualified to answer that. He merely says from contact with mills. What he means by that I don't know.

General Appraiser MCCLELLAND. I don't think he has been qualified as a commercial witness.

Mr. LAWRENCE. If you will withdraw the objection, I will ask another question.

Mr. SHARRETTS. All right. If you will withdraw the question, I will withdraw the objection.

Mr. LAWRENCE. The question is withdrawn.

Q. What familiarity or connection have you had with mills which enable you to know what quality of wool is commercially
31 adapted to combing?

A. I am a member of the sales committee of our organization. We merchandise from three to six million pounds of wool a year.

Q. As a part of that business are you required to know the qualities which will adapt certain wool for combing purposes?

A. I spent a portion of my time in the warehouse, all during the summer, with the graders, going over the grades of wool and determining their character.

General Appraiser MCCLELLAND. Did you make any actual sales?

The WITNESS. Only in an advisory capacity. I am a member of the sales committee of this organization.

General Appraiser MCCLELLAND. Do you make any actual sales?

The WITNESS. I have made some sales, but not many.

Q. Did you have anything to do with determining the fitness of wool for its adaptability for combing?

A. That is left to our graders. I do no grading, no; but I am familiar with the requirements of combing wools; yes.

Q. Have you ever seen wools that are sorted and graded for combing purposes?

Mr. SHARRETTS. That is objected to. The witness in his prior answer has shown that he is not qualified to answer anything as to whether wools are suitable for combing purposes or not. He can't very well tell that when he is not qualified.

General Appraiser MCCLELLAND. He may answer "yes" or "no." Objection overruled.

Answer. Yes.

Q. Have you been through mills where combing operations are conducted?

A. Yes.

Q. Have you observed the character of the wool used for combing?

A. I have.

Q. Have you done that frequently in your experience?

A. I have visited quite a number of mills.

Q. Do you do that every year?

A. Yes, sir.

Q. Now, from your examination of Exhibit 5, will you say whether it possesses the qualities which adapt it for common use as combing wool?

Mr. SHARRETTS. That is objected to.

Mr. LAWRENCE. Based upon your experience.

Mr. SHARRETTS. The witness has stated——

A. I would say it would not.

Q. Why?

A. It is too tender in fiber. It would break in going over the combs.

32 By General Appraiser MCCLELLAND:

Q. What is one prerequisite that makes wool suitable for combing?

A. That would depend somewhat on the type of mill using it—staple and strength, I should say.

General Appraiser MCCLELLAND. About what length?

A. That would be the staple.

By Mr. LAWRENCE:

Q. Are you familiar with wool known as merino wools?

A. I am.

Q. Do you raise them?

A. I do.

Q. Are you familiar with the characteristics which merino wools possess?

A. I am.

Q. Can you detect the presence of merino blood in wool from your knowledge of wool?

A. To a certain degree; yes.

Q. How is it manifested; that is, the presence of merino blood?

A. By the fineness of the fiber, the crimp in the fleece, the peculiar coloring of it. It has a different shade from other wools.

Q. Are those qualities you find present in merino wools that you grow?

A. Yes.

Q. Examine Exhibits 1 to 12. Did you examine them to determine whether they possess merino blood?

A. I did.

Q. Did they or did they not?

Mr. SHARRETTS. I object to that as immaterial. The law states nothing about merino wool. There is only one question here, as to whether these wools are commonly known as clothing wools. That is just loading up the record with immaterial matter.

Mr. LAWRENCE. Wools of merino bloods, immediate or remote, were for years classed as class 1 clothing wools.

Mr. SHARRETTS. I object to that statement as being inaccurate.

General Appraiser MCCLELLAND. Those of us who are familiar with the tariff law know that that did figure to some extent, but it seems to me that Congress made a new departure in classifying wools under the emergency tariff act.

Mr. LAWRENCE. That is true, but if in ascertaining the meaning we go back over the ages and find that at one time, at least, this wool was commonly known as clothing wool, that may have an important bearing.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. I offer to prove that if the witness were permitted to answer the question he would testify that all of the samples show the presence of merino blood.

Q. Mr. Walker, in stating your definition of the term clothing wool, or your understanding of the term clothing wool, as a
33 producer, does the length of the staple have anything to do with your determination of whether wool is clothing wool or not?

Mr. SHARRETTS. That is objected to, if your honors please, as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. No; length of staple is not taken into consideration.

Q. And in your answer to my question what your understanding of the term clothing wool is and was you said, "I think all wools are clothing wools." Will you state whether you meant that that was your understanding of the term?

Mr. SHARRETTS. That is objected to as leading the witness away from what he testified to. I will ask to have the question read.

(The reporter read the question.)

Q. Is that your understanding of the meaning of the term "clothing wool," from a producer's standpoint?

A. It is.

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. I don't think it is within the range of possibility for this witness to speak for the woolgrowers of this country, and say that the common understanding among them is so and so. If you are proving a commercial term, that is one thing. Of speaking of the individual, going around among the individuals buying and selling. Here you ask a man to speak for those people whom he has never seen and never talked with as to their understanding.

Mr. LAWRENCE. He has come in contact with 25,000 producers a year.

General Appraiser BROWN. I will agree with Judge McClelland, except that I feel that this decision of the court permitted it.

General Appraiser McCLELLAND. You can't prove commercial understanding in that way, by wholesale.

Q. Mr. Walker, as you have come in contact with the producers of wool to the extent of 20,000 or 25,000 a year, have you found that the meaning which you have given of the term "clothing wool" is generally recognized as you have stated it?

Mr. SHARRETTS. That is objected to, as the witness is not competent to testify.

General Appraiser McCLELLAND. It is not the way, in my view, to prove common understanding. We might as well get a third member here, because we can't get along.

(At this point the chairman of the board dispatched a messenger for General Appraiser Sullivan.)

(General Appraiser Sullivan appears and there is now the full board present.)

(The last two questions objected to were read by the reporter.)

34 General Appraiser SULLIVAN. He is not speaking for the trade but as a producer? That would not be the trade understanding, would it?

Mr. LAWRENCE. No; it is the understanding of a producer of wool. It is the understanding of the producers of wool as to the meaning of the term "clothing wool." It is the community expression.

Mr. SHARRETTS. The testimony is being confined to what this man thinks other people think.

General Appraiser SULLIVAN. He may give his individual opinion, but that is not common understanding.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception.

General Appraiser BROWN. My dissent will be recorded.

Mr. LAWRENCE. I offer to prove that if the witness were permitted to answer he would state that the term "clothing wool," as commonly understood in the community of woolgrowers that he comes in contact with, refers to wool commonly used in the manufacture of clothing, regardless of the length of staple. You may cross-examine.

By Mr. SHARRETTS:

Q. Mr. Walker, how long did you say that you had held your present position?

A. Since the 25th of May, 1918.

Q. And what is your position again?

A. I am the field manager of the cooperative wool-marketing organization of the Ohio State Wool Growers' Association, taking wools direct from the grower, grading them into commercial grades, and selling them to the mills.

Q. Grading them into combing wool and clothing wool?

A. Yes, sir.

Q. Of various qualities of fineness?

A. Yes, sir.

Q. That is, wool is divided into clothing wool and combing wool according to the length of staple?

A. And conditions.

Q. And each of those general classes is in turn divided according to quality into fine, half-blood, three-eighths blood, one-fourth blood, etc.; is that correct?

A. That is correct.

Q. As a general proposition, the clothing wools go into the woolen system and the combing wools to the worsted system?

A. As a general proposition.

Q. You speak in your testimony as to a producer's point of view?

A. Yes, sir.

Q. You meant nothing more there than that the producer might think of clothing wool as something that was going into the manufacture of clothing that the mill might not have regarded as such?

A. The producer does think of it as that.

35 Q. You are speaking now as to how you yourself think?

A. I am speaking of what others think.

Q. Of course, you don't know what other men are thinking of, do you?

A. I do, from the communications we get; yes.

Q. The term clothing wool is not one in general use, in that meaning, is it?

A. In what meaning?

Q. In the meaning of wool used in the manufacture of clothing?

A. It is for the producers; yes, sir.

Q. Why should they use it that way?

A. Because that is the only idea of wool that he has. There is no point of contact to-day, and if you will pardon me for elaborating on this—between the men who grow the wool and the mill, ordinarily speaking. The dealer in between takes the wool from the grower. The grower knows of wool simply as fine Delaine, or coarse wool. That is the only classification he knows. He thinks of all of this as clothing wool. He classifies all wool as clothing wool that he

is producing. The dealer, on the other hand, if the grower does classify his wool, he classifies it somewhat according to the breeding of sheep.

Q. That is, as clothing and combing wool?

A. As fine or coarse.

Q. As to length of staple?

A. He does not know anything about length of staple, as a rule. That has been my business, in going out and educating these people as to what the technical commercial terms mean.

Q. That would include the division of combing and clothing?

A. Absolutely.

Q. As a matter of fact, haven't all of these growers been receiving constantly communications from the Government?

A. Yes; but they don't understand them.

Q. They receive them?

A. Yes, sir.

Q. Didn't the Government take over the wool from practically all of these people during the war?

A. Yes, sir.

Q. Didn't it settle with them on the basis of combing or clothing wool?

A. They settled with the dealers.

Q. But the growers received more money for one class of wool than they did for the other?

A. No.

Q. Weren't they always settled for on the basis of clothing wool or combing wool.

Mr. LAWRENCE. I object to that.

A. As a matter of fact, the price of wool in the country is practically the same for all grades of wool, in sections.

General Appraiser SULLIVAN. Wouldn't that go to the question of common understanding if he could show that the man handling wool for the Government had one view and some one else had another view?

36 Mr. LAWRENCE. The witness has said that the producers knew nothing about it.

General Appraiser MCCLELLAND. Mr. Sharretts contemplated having the witness state whether or not the Government, in paying for these wools, paid one price for one class of wool and another price for another class of wool.

Mr. SHARRETTS. That is correct.

General Appraiser MCCLELLAND. I think that is perfectly competent. Objection overruled.

Q. You, of course, don't mean to say that the large wool producers have in the past five years or six years——

General Appraiser MCCLELLAND. What did the Government do?

The WITNESS. The question, if I understand, is as to the settlement to the growers in various prices—the growers, whether they got different prices for different grades of wool, or not?

Q. I wanted to know if the Government didn't pay more for the combing wool than for the clothing wool?

A. The growers received the same flat prices on all grades of wool.

General Appraiser MCCLELLAND. You testified that the Government did not settle with the growers direct at all, but settled with the dealers. The question was how the Government paid him regardless of who got the money. Did they pay for wool as such or did they pay for different grades of wool different prices?

Mr. LAWRENCE. I want to note an objection on the ground that it has not been shown that he knows.

General Appraiser MCCLELLAND. If he doesn't know, he can say so. He is a very intelligent man. I advise you now not to testify to anything you don't know.

By Mr. LAWRENCE:

Q. Do you know how these settlements were made?

A. I do know. The Government did settle on the basis of the fineness of fiber and length of staple at various prices to the dealers who secured these wools, but the growers received flat prices, generally speaking.

By Mr. SHARRETTS:

Q. Of course, the wool from these different producers was used for various purposes I presume—for tapestries, blankets, and various other purposes?

A. Yes, sir.

Q. So that there is no necessary association between the clothing wool—using the term in the manufacture of cloth, it might be tapestry wool or blanket wool?

A. Blanket woods are suitable for clothing purposes.

37 Q. Why should there be any distinction made? Why should the term "clothing wool" ever come up into the minds of the producers?

A. Because there are large quantities of wool that are used for other purposes, not so much of that is produced in this country. The grower ordinarily receives his knowledge from the terms of wool by taking his wool years ago to the small mill where it was manufactured into clothing. He said, "That makes nice cloth. This will make cloth of one kind and this will make something else," but the only knowledge that the grower had was what the old man handed down to his son, and what he got at the mill.

Q. The growers did not come in contact with the mill?

A. They did not for a great many years.

Q. According to your idea of it, they would all grow the same kind of wool, and always the same kind of wool—this is, the wool

for use in the manufacture of clothing? That is all the grower would be growing, nothing else—that is, wool for the manufacture of clothing.

A. That is all they thought of except that they thought of it as fine or coarse wool.

Q. If they learned of it, it is something they have inherited from some prior generation?

A. Yes.

Q. Really there is no general use of the term "clothing wool" among producers only as wool used in the manufacture of clothing?

A. I think that is the general conception.

Q. What possible reason would they have for using that term now?

A. I have just tried to tell you.

Q. Why should they use it a great many generations ago?

A. I didn't say a great many generations ago.

Q. Well, several generations ago.

A. I didn't say several generations ago.

Q. One generation ago?

A. That is different.

Q. Why should they use the term "clothing wool" to-day? What is the purpose of it?

A. Why do you use the terms that your father used? It is probably the only term that they used. They spoke of it as wool. They thought of it as fine wool or coarse wool, or merely clothing wools, wools adapted to use in the manufacture of clothing.

General Appraiser McCLELLAND. They had no knowledge of the technical use of the term?

A. No knowledge whatever.

Q. They have been constantly receiving for years back literature pointing out the distinction in the trade?

38 A. That is true; but it is exactly the same proposition as a man who might receive a Polish newspaper and would have no interpretation of what it means.

Q. You don't think the intelligent sheep grower pays any attention to it?

A. Yes; he does.

Q. Do you think that is a condition among many good sheep growers that they know nothing about the market terms?

A. Excepting in a general way. It is nothing unusual for a grower to come out and say, "Here is the wool market quotations, but that does not apply to your kind of wool." I am referring to the wool growers that I have met, because my work is largely educational work—going out and educating these men so that they can read the market reports intelligently; so that they will know what the grading sheet is. That has been the point of contact I have had with the grower.

General Appraiser McCLELLAND. Your understanding of the average raiser is that he just knows that wool is something that grows on the back of the sheep?

The WITNESS. That is about it.

General Appraiser McCLELLAND. He does not distinguish between clothing, combing, or carpet wool?

The WITNESS. That is about it. He——

Q. Have you ever seen in any written publication or document——

Mr. LAWRENCE. I think the witness should be permitted to testify along the points of your suggestions.

(The last question and answer were read by the reporter.)

Mr. LAWRENCE. He started to say something which I don't think the stenographer got.

General Appraiser McCLELLAND. What else did you say that the stenographer did not get down?

The WITNESS. I started to finish that last sentence there. He merely considers that there is one type of wool.

Q. In which the term "clothing wool" has been used as meaning wool used in the manufacture of clothing, and the distribution among the wool producers?

A. Yes; I have seen such statements. I saw it in the tariff act of 1867, and in the tariff act of 1883 clothing wool was so classified.

Q. And that is the extent to which you have seen it in the tariff act of 1867 and 1883?

A. No; I have seen that term frequently used in the broad, generic sense in talking about wool.

Q. Where did you ever see it excepting in the tariff act of 1867 and 1883?

A. I have seen it in very many wool publications. I don't know that I can recall any of them. I think Hoxbury so classifies them in the general term.

39 Q. I am speaking now of communications among the producers of wool. I understand you to say that they understand the term "clothing wool" to mean wool used in the manufacture of clothing. How have they expressed that?

A. Simply by telling me that that is their conception of the idea, and when they got the grades, writing to us and telling us that is wrong. A man may be engaged in growing sheep and he may get half blood, and fine clothing, and when he gets a variation he writes in and says, "I have Delaine sheep"—he uses that interchangeably, and he imagines that because it comes from the certain brood of sheep that he should have a grade, a certain grade, of wool on all the wool that he produces from that breed of sheep. Another man would have cross-bred sheep, and he will write in and say, "I have one-half bred wool, and I find I have some combing wool or clothing wool."

Q. That is from the producer?

A. That is the producer's idea.

Q. That is exactly what I have understood.

A. He does not understand the commercial terms: he simply classifies them according to breeds.

(General Appraiser Brown at this point withdraws.)

Q. The producer whose purpose it is to raise only a combing wool, that would be the Delaine?

A. Correct.

Q. He finds that he has in there some short staple—the particular clip will show a large percentage of short wool, and he will write in and say that he has some combing wool and some clothing wool? He does not understand it?

A. Yes.

Q. When he is using the term "clothing wool" is he using it in connection with the short-staple wool?

A. He asks what it means.

Q. Your other answer is that the man would write——

A. He would write in and want to know why it was not all Delaine.

Q. Why some was combing and why some was clothing?

A. Yes. He does not understand as to what those terms were.

Q. For the past six years you have been going around among them and pointing out and describing these different grades?

A. Yes.

Q. To what extent do you think that your efforts have been successful?

A. Probably to-day all the men in my State are fairly familiar with the grades, but they were not until the last two or three years.

Q. Efforts are being made in other States in the last few years?

A. Yes, sir.

Q. It is possible that in the other States that the producers will be familiar with the terms?

A. We are very hopeful that they will.

Q. It may be that in other States than yours that these producers have been familiar with the term for a number of years?

A. That may be true, but it is not true with the majority of producers.

Q. How long have you personally been familiar with the distinction between clothing wool and combing wool?

A. I don't know that I can answer that accurately. I would say probably seven or eight years.

Q. And you speak, however, of the terms being used in the tariff acts of 1867 and 1883?

A. Yes, sir.

Q. How far does your experience in wool producing go back?

A. Primarily 20 years. My father was a wool producer as far back as the Cleveland administration.

Q. You personally have not known the distinction between combing wool and clothing wool until five or six years ago?

A. Seven or eight years ago.

Q. Mr. Walker, will you just tell me again what was the name of the organization that you are connected with?

A. The Ohio Sheep & Wool Growers' Association.

Q. Is that a part of the National Warehouse & Storage Co.?

A. No. We have no connection with each other.

Q. By producer, as I understand it, you mean the man who raises the wool and knows nothing more about it, is not that correct?

A. Yes, sir; well, I would not want to make that statement.

Q. He knows nothing about marketing it?

A. He is simply the man who grows the wool. The producer is the man who grows the wool.

Q. Are you familiar with these papers?

A. Yes, sir.

Q. Don't you know as a matter of fact that they are widely distributed amongst the producers by the Department of Agriculture?

Mr. LAWRENCE. I object to that.

General Appraiser McCLELLAND. He may answer "yes" or "no."

A. To a limited extent they are. In Ohio they are distributed to a list of about 1,000 that we furnished the department about three months ago.

Q. You know, as a matter of general information, that they are distributed throughout the country?

Mr. LAWRENCE. That is objected to as immaterial and relates to something that is not in evidence, and I move that the testimony be stricken out.

General Appraiser McCLELLAND. He does not know.

41 Q. The grading and classification specified in these two papers——

General Appraiser McCLELLAND. You must not examine him as to the contents of this paper which is not in evidence.

Mr. SHARRETTS. I am now cross-examining him.

General Appraiser McCLELLAND. The paper was never offered in evidence.

Mr. SHARRETTS. It may break down his testimony.

General Appraiser McCLELLAND. What are these papers?

Mr. SHARRETTS. It is the classification of wool. I offer these in evidence.

Mr. LAWRENCE. I object to them on the ground that they are incompetent, irrelevant, and immaterial.

Mr. SHARRETTS. I offered them for the purpose of cross-examining the witness.

General Appraiser McCLELLAND. If that is the purpose, then I sustain the objection.

Mr. SHARRETTS. Exception. I ask that they be marked for identification.

(The papers were marked "Collective Exhibit 2 for identification, Protest No. 9:9137," of this date.)

Q. Mr. Walker——

General Appraiser McCLELLAND. Are these papers that were produced by the witness, or what are they?

A. The papers are papers that are published by the Department of Agriculture, specifying certain methods of grading and classifying wool. I was merely going to ask the witness if that was his method of grading and classifying wool, within his knowledge.

General Appraiser McCLELLAND. It depends on the man who prepared it. Maybe he is not in the Government service any more. He may be out now employed by the wool growers.

Q. In selling wool in your organization in 1921 throughout the country they were generally classified into clothing wool and combing wool, and into fine, one-half blood, one-fourth blood, etc., isn't that true?

A. For mill purposes; yes, sir.

Q. For purposes of selling?

A. We sold them to the mills.

Q. You sell not only to the mills but to dealers?

A. Only to the mills.

Q. Your organization does not sell to dealers at all?

A. Once in a while.

Q. Wherever you have sold, that has been the method of classification, into combing and clothing wool?

A. We call them the technical grades.

42 Q. That is true throughout the wool trade in the United States and throughout the world; isn't that correct?

A. So far as I know.

By Mr. LAWRENCE:

Q. Are those distinctions, Mr. Walker, recognized among the producers?

A. They are not.

Q. Since you have been associated with the Ohio Wool Growers' Association have you continued to be a producer of wool?

A. I have.

Q. And when you stated that the producer of wool was simply a grower of wool, did you mean to imply that he does not sell his wool?

A. He sells his wool generally through the local buyers.

Q. Is there any grade of wool known to the producers as carpet wool?

A. Not in my section. Some limited quantities of carpet wools are produced, but not in our immediate section.

Q. What is the majority of the wool known as in your section, as known to the producer?

Mr. SHARRETTS. That is objected to as immaterial. The question is, What is this wool here known as?

General Appraiser McCLELLAND. Objection overruled.

A. They think of it merely as wool suitable for clothing, or if they do classify it into fine as well as coarse wools.

(General Appraiser Sullivan at this point withdraws.)

EDWARD L. MOODY, a witness for the United States, being duly sworn, testified as follows:

By Mr. HOPPIN:

Q. What business are you engaged in, Mr. Moody?

A. Farming; fruit growing, sheep raising.

Q. For how long have you been engaged in sheep raising?

A. Well, I have been 40 years on my own account and have always been connected with the business from a child.

General Appraiser MCCLELLAND. That is, you were raised on a farm?

The WITNESS. Yes, sir.

Q. What is your present business, Mr. Moody?

A. The same.

Q. Are you officially connected with any other association?

A. Yes.

Q. What is the name of the association?

A. New York State Sheep Growers' Cooperative Association (Inc.).

Q. Where is that situated?

A. Headquarters, 307 South Franklin Street, Syracuse, N. Y.

43 General Appraiser MCCLELLAND. About how many sheep have you got?

The WITNESS. Myself?

General Appraiser MCCLELLAND. Yes.

The WITNESS. Why, I carry about 250 breeding ewes. I have a half interest in about 120 more.

Q. Will you state what different ways you have handled wool as a producer and as a seller of wool?

A. Well, up to about five years ago we always sold our wool at a flat rate to the local dealer all at the same price. About five years ago we perfected this marketing organization and it has been sold on a graded basis since that time.

Q. About how many pounds of wool have you handled since that time?

A. Through the organization?

Q. Yes.

A. We have handled on an average of about 500,000 pounds a year.

General Appraiser MCCLELLAND. What have you got to do with the organization?

The WITNESS. I am president of it and the final sale comes up to me in determining the price.

General Appraiser MCCLELLAND. Do you have anything to do with the negotiation, or with classifying the wool?

The WITNESS. We employ a competent grader.

General Appraiser MCCLELLAND. I am talking about you personally?

The WITNESS. I am not qualified to grade wool.

Mr. LAWRENCE. But you know from your own personal experience the different classes and kinds of wool?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser McCLELLAND. Find out what he does know.

Mr. HOPPIN. I am asking him.

Q. Do you know—have you examined the Exhibits 1 to 12 in this case, Mr. Moody?

A. I stood by while they were examined yesterday.

Q. And have you handled——

General Appraiser McCLELLAND. If he is going to be qualified he must be qualified. He stood by while they were being examined by somebody else, that does not mean anything, if you are trying to qualify him. He has not yet said that he did.

Q. Did you personally examine the samples, Exhibits 1 to 12 in this case, Mr. Moody? If you did not, will you please examine them now?

A. In a way I did examine them.

44 Q. If there is any question about it, Mr. Moody, I will get you to examine them now. Can you tell from the examination that you made, the character and characteristics of the wool covered by Exhibits 1 to 12—can you state?

General Appraiser McCLELLAND. Yes or no.

A. I think I can.

Q. Have you in your experience handled or come in contact with wool similar to the wool covered by those Exhibits 1 to 12?

A. They are of a different character somewhat than those wools produced in New York State.

General Appraiser McCLELLAND. You mean to say that you have not raised wools like the samples, Exhibits 1 to 12; is that right? That they are different from the wools that you grow in New York State?

Mr. HOPPIN. He has not said that.

General Appraiser McCLELLAND. Do you mean to say that? What is the fact? Are they different from the wools that you raise in New York State?

Mr. HOPPIN. I think, if your Honor please, I would like to go ahead with the examination of this witness.

General Appraiser McCLELLAND. Let him answer the question, and let him go ahead.

Mr. HOPPIN. I will withdraw the question.

General Appraiser McCLELLAND. You can't withdraw my question.

Mr. HOPPIN. State from your own knowledge.

Mr. SHARRETTS. One minute.

Mr. HOPPIN. I am examining this witness and I am entitled to an examination.

Mr. SHARRETTS. It is a question by the court, and I insist upon the answer.

Mr. HOPPIN. You are not examining the witness, and I must object to the counsel interrupting.

A. I don't think our wools are quite similar to those wools. The finer grades of our wools are not quite as fine as some of those.

Q. Are you sufficiently familiar, Mr. Moody, with wools of a similar character to state the characteristics, the quality of the wools covered by Exhibits 1 to 12, from your personal experience?

Mr. SHARRETTS. That is objected to as calling for a conclusion. Let the court decide that.

General Appraiser MCCLELLAND. You must show by facts whether it is. A man might say, "Yes, I am sufficiently familiar," but that would not prove it.

45 Q. Have you had personal experience, Mr. Moody, in handling wools of the character similar to the exhibits?

Mr. SHARRETTS. That has been answered.

General Appraiser MCCLELLAND. That is precisely the same question. You are asking him to express the opinion as to whether he has had sufficient experience. Show what his experience has been, and then we will determine from his detail of experiences whether he has had any.

Q. Have you handled wool similar in characteristics to the wools, Exhibits Nos. 1 to 12?

Mr. SHARRETTS. If your Honor please, that is objected to as a repetition.

Q. Perhaps you prefer to go over the samples?

General Appraiser MCCLELLAND. Let him answer that question.

Mr. HOPPIN. Mr. Moody says that he has not had an opportunity to go over them thoroughly, and perhaps he is not satisfied. I would prefer to give him an opportunity.

General Appraiser MCCLELLAND. He said that he examined them and said in a way, "I did examine these wools."

Mr. HOPPIN. We will give him an opportunity to examine them now. If he is not satisfied about his examination before, then I suggest that he examine them now.

General Appraiser MCCLELLAND. You may withdraw him.

Mr. HOPPIN. I will withdraw him temporarily until after recess.

General Appraiser MCCLELLAND. Have you any doubt as to whether your examination of these wools was sufficient to inform you as to their character?

The WITNESS. To establish what?

General Appraiser MCCLELLAND. That you are familiar with their character? Would you like to make a further examination of them?

The WITNESS. I think I had better do so.

General Appraiser MCCLELLAND. He says he would like to make a further examination.

Mr. HOPPIN. All right.

General Appraiser MCCLELLAND. Do you want to withdraw him?

Mr. HOPPIN. To suit your Honor's convenience.

General Appraiser MCCLELLAND. I don't want to sit here idle. How long would it take to make your examination?

Mr. HOPPIN. Maybe 20 minutes.

The WITNESS. I would prefer to wait until this afternoon.

General Appraiser MCCLELLAND. Call your next witness.

46 V. G. WARNER, a witness for the United States, being duly sworn, testified as follows:

By Mr. LAWRENCE:

Q. Mr. Warner, what is your business address?

A. Bloomfield, Iowa.

Q. What is your business?

A. Breeder and feeder.

Q. Breeder of what?

A. Sheep.

Q. Do you purchase wool?

A. Yes, sir.

Q. How many years have you been in the wool business?

A. Well, that is kind of hard to say. I commenced when I was 12 years old. My father gave me a tract of land, and I have been at it ever since.

Q. Fully 30 years, I take it?

A. I have been in the business about 27 years for myself.

Q. As a breeder of sheep and purchaser of wool?

A. Yes, sir.

Q. What disposition have you made of your wool?

A. I have sold it to a local buyer, with the exception of these last four years.

Q. Are you or have you been an officer of any local State organization handling wool?

A. Yes, sir.

Q. What is that organization?

A. The Iowa Fleece Growers' Association.

Q. In what capacity are you associated with the association?

A. Secretary, treasurer, and manager.

Q. What are your duties?

A. Keeping the records of the association, and also to explain and solicit wool consignments to be sold cooperatively.

Q. Did that bring you in contact with producers of wools?

A. It surely did.

Q. Approximately how many annually?

A. Oh, eight to ten thousand.

Q. How long were you with that association?

A. Four years.

Q. Have you always been a producer up to the present time since you began to produce wool?

A. Yes, sir.

Q. In the State of Iowa?
A. Yes, sir.
Q. Have you produced wool in any other State?
A. No, sir.
Q. What breeds of sheep are you breeding?
Mr. SHARRETTS. That is objected to as immaterial.
Q. Do you come in contact with the mills using your wools?
A. I have.
Q. Have you seen the operation of combing wool in the mills?
A. I have.
Q. Have you seen the character of wool that is used for combing?
A. I have.
47 Q. Have you seen the combing operation and the character of wools used for combing a number of times in your experience?
A. A number of times; I don't just get what you mean.
Q. I mean have you seen those wools in those operations frequently or infrequently?
A. I have only seen them at about four different mills.
Q. But have you visited those mills a number of times?
A. Yes.
Q. And have you seen the character of wools used for combing in those mills?
A. Yes.
Q. Can you by examining samples of wool determine whether they possess the characteristics fitting them for combing purposes?
A. As I understand the term.
Q. What are the qualities which fit wool for combing?
Mr. SHARRETTS. That is objected to. The witness has not been qualified to answer any such question. The utmost the testimony shows is that he has seen operations in the mills on several occasions or on a number of occasions, and I don't think that qualifies him to answer any such question.
Mr. LAWRENCE. He said that he has.
General Appraiser MCCLELLAND. I will allow the last question, what are the qualities.
Q. That wool must possess to fit it for combing?
General Appraiser MCCLELLAND. You may answer that question.
A. As I understand it, the length of the staple.
Q. Does the strength of the fiber have anything to do with it?
A. Certainly.
Q. Do you produce wools which you know as clothing wools?
Mr. SHARRETTS. That is objected to, if your Honor please.
General Appraiser MCCLELLAND. Yes. I think the fair way would be to ask him what kind of wools he produced, and that would avoid objection. What kind of wools do you produce?
Mr. LAWRENCE. Exception.
Mr. SHARRETTS. I further object on the ground that he is not qualified to answer.

Mr. LAWRENCE. I offer to prove that the witness, if permitted to answer the question, he would testify that he does produce wools known to him as clothing wools.

Q. Do you know the term "clothing wool"?

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. There is not the slightest objection to asking this witness what kind of wools he produces.

Mr. LAWRENCE. I am asking him now if he knows the term "clothing wool."

48 Mr. SHARRETTS. I object to that as immaterial.

General Appraiser McCLELLAND. Yes or no. Objection overruled.

A. As a mill term I do, and as a breeder I know of it as another term.

Q. As a breeder of wool, what does the term "clothing wool" mean, as you understand it?

A. Any good wool.

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. What does he know?

Q. Describe what you know as clothing wool, its character, and use.

A. That has length and strength that can be made into yarns, and made into clothing.

General Appraiser McCLELLAND. Does that mean a short staple or long staple, or both?

The WITNESS. It means both.

Q. Has that always been your understanding as a breeder and producer of wool?

A. It has.

Q. Do you remember examining Exhibit 5 this morning in my presence?

A. Yes.

Q. Will you state whether that sample of wool possessed the length of staple and quality of fiber which would make it commercially adaptable for combing?

A. It did, but as a grading term it is known as tender wool.

Q. In your judgment would it be commercially profitable to use it for clothing?

A. Yes, sir.

Q. Even though it is tender?

A. Yes, sir.

By Mr. SHARRETTS:

Q. Mr. Warner, there are two general classes of wool according to the length of staple, combing and clothing wool, is that correct?

A. Those are mill terms.

Q. As a matter of fact, there exists two general classes of wool, classified according to length of fiber, one class being known as combing wool and the other as clothing wool?

A. Those are mill terms.

Mr. SHARRETTS. I ask that that be stricken out as not responsible.

Mr. LAWRENCE. I object to that being stricken out. He has clearly made the differentiation.

Mr. SHERRETTS. I asked him if these two general classes existed. He says they are mill terms.

General Appraiser MCCLELLAND. Go ahead with your cross-examination. You are not tied down by any technical ruling. You can ask him whether they have those limitations or not. Go ahead with your cross-examination.

Q. Whenever you happen to recall those terms, those distinctions exist do they not, clothing wool and combing wool, one being
49 a short fiber wool and the other a long fiber wool?

A. When we are talking in mill terms, we do.

Q. How about the cooperative association that you state that you are an officer of, they recognize those distinctions, don't they?

A. In their grading.

Q. They are not a mill, are they?

A. They grade for mills.

Q. Of course, all wool goes eventually to the mills?

A. Absolutely.

Q. But those—any one selling wool in wholesale quantities would recognize those two distinctions, isn't that correct?

A. I would not say any one.

Q. Any one selling wool in wholesale quantities, in the regular course of trade, in the markets of this country, so far as you know?

Mr. LAWRENCE. I submit that the testimony brought out by Mr. Sharretts as to commercial distinctions of wool are not properly related to the cross-examination of this witness.

Mr. SHARRETTS. Why not?

Mr. LAWRENCE. I examined him as a producer, and his understanding as a producer. If counsel for the other side want to find out what the commercial distinction is, they must make him their own witness.

General Appraiser MCCLELLAND. I think he had to do with the sales, too.

Mr. LAWRENCE. I proved that he sold wool as a producer.

General Appraiser MCCLELLAND. Has that any connection with your association that you had to do with the sales? Did you say that?

The WITNESS. No.

General Appraiser MCCLELLAND. Then I am wrong. It does not appear yet that the witness has had any commercial experience whatever, except in the visiting of four mills.

Q. Mr. Warner——

Mr. LAWRENCE. I move to strike out the testimony of Mr. Warner on Mr. Sharretts's cross-examination, so called, relating to commercial distinctions.

Q. And they sell direct to the mills, do they?

A. Yes, sir.

Q. And they sell, according to these grades, combing and clothing wool, according to the various lengths of staples, and the various strengths and quality: is that correct?

A. Yes, sir.

52 Q. The members of this association are producers? Is this association made up of producers?

A. Yes, sir.

Q. And breeders?

A. Yes, sir.

Q. So that while the association is thoroughly familiar with those terms, "clothing wool" and "combing wool," it has reference to the division according to the length of staples: is not that correct? It sells according to grades of fineness, and the division into clothing and combing wool according to the length of staple?

A. The association?

Q. I mean the association which is marketing wool of which you are an official.

General Appraiser McCLELLAND. That is an organization. You don't mean to say, does the organization ask us. You want to know whether the membership does?

Mr. SHARRETTS. I believe that his testimony was that as an organization it sort of pooled the wool, and sold it into the mill; isn't that correct? And those that act for the association in the sale of this wool sell it according to its being clothing wool or combing wool.

Mr. LAWRENCE. I object to that on the ground that it is not proper cross-examination. I did not bring out anything about the sales of combing or clothing wool on my direct examination.

Mr. SHARRETTS. He brought out the fact that this man sold so many hundred pounds of wool.

General Appraiser McCLELLAND. Objection overruled.

Mr. LAWRENCE. Exception.

Mr. SHARRETTS. I will withdraw the question.

Q. What is the name of that organization of which you are a member?

A. The Iowa Fleece Growers' Association.

(At this point a recess was taken to 2.30 p. m., at which time the hearing reconvened.)

AFTERNOON SESSION

Present: General Appraiser McClelland.

Appearances: The same as at the forenoon session.

V. G. WARNER, who was under examination when the recess was taken, resumed the witness stand and continued his testimony as follows:

Mr. SHARRETTS. I think the last answer was the name of the organization.

(The reporter read the last question and answer.)

53 By Mr. SHARRETTS:

Q. As I understand it, the purpose of that association, Mr. Warner, one of the purposes is to grade and market the wool for its members; that is correct, is it?

A. Yes, sir.

Q. In grading the wool, they grade it into clothing and combing, all the various qualities of fineness; is that correct?

A. They grade it into various mill terms that are used.

Q. They grade the wool into combing and clothing, into various qualities?

A. According to fineness; yes.

Q. And the combing wools are the longer fibers, and the clothing wools are the shorter ones of each quality; is that correct?

A. That is the mill terms that are used.

Q. And in selling the wool to the mills, or whoever buys them, do they sell it to dealers, too?

A. Sometimes the most of it is sold to the mills.

Q. In selling this wool, the long-fiber wool is combing wool and the shorter fiber wool is clothing?

A. I think they use the word "staple."

Q The clothing wool is the shorter fiber?

A. Yes.

Q. Do I understand that the purpose of this association is to try to educate the various growers as to this grading?

A. As to these mill terms there have been.

Q. And to the classes and qualities of the wool?

A. Yes, sir.

Q. Did I understand you to say when you were thinking as a grower or as a breeder, that you referred to the wool as suitable for use in clothing?

A. It is all considered—all the Iowa wool is suitable for clothing except tags and murrin dead.

Q. Did I understand you to say that when you were speaking as a breeder and you used the term "clothing wool" you meant wool suitable to make clothing out of?

A. Yes; and that means all the long wools as well as the short ones.

Q. I also understood you to say that it has been the purpose of your association, ever since you have been a member of it, to make the various producers to understand that that is not the correct way to do it, but the correct way is what you call the mill term?

A. We have been trying to teach them the mill terms.

Q. But you have not succeeded in teaching yourself?

A. Because the buyers buy it all at the flat rate as clothing wool.

Q. You say that you speak as a breeder; you refer to clothing wool as for the manufacture of clothing; yet at the same time you are trying to educate the breeders to the use of the mill terms,

54 and the fact that this is the incorrect way of doing it. What you are referring to, with reference to staple——

Mr. SHARRETTS. I will withdraw the question.

Q. Have you ever sold any lot under the name of clothing wool?

A. Yes, sir.

Q. When was the last sale that you made as a breeder? You yourself have sold a lot of wool under the name of clothing wool; to whom did you sell it?

A. To a dealer there.

Q. What is his name?

A. C. D. Fortune.

Q. When did you make that sale?

A. In 1917.

Q. That was the last lot of wool that you sold under the name of clothing wool; is that correct?

A. That isthe last I remember of.

Q. Have you been selling wool since then?

A. I have been shipping it.

Q. On consignment?

A. Yes, sir.

Q. Do you get a settlement statement if you ship wool on consignment?

A. We do.

Q. Doesn't that settlement notice indicate which is clothing and which is combing?

A. Yes, sir.

Q. That is, according to the length of staple?

A. Yes, sir.

Q. In that instance, at any rate, as a raiser of sheep you had to write in the transaction distinctions?

A. Yes, sir.

Q. You understood what that meant, as a breeder, then, didn't you?

A. Yes, sir; as a breeder then, certainly.

Q. So that when he stated that in the transactions as a breeder that the distinction was made, that statement was not correct?

A. Absolutely, when we sold to a dealer.

Q. When you ship it on consignment, then, as a breeder, you do make a distinction?

A. It is sold on grade then, according to the mill terms.

Q. That is, you, as a raiser of sheep and a breeder, sold according to mill terms, dividing it into combing wool and clothing wool?

A. If we pool it we do.

Q. When you ship it on consignment you, as a breeder, actually make those distinctions?

A. When we pool it we do.

Q. Other producers do the same thing, do they not?

A. All the pool do.

57 Q. So that in every instance of that kind the breeder has right under his eyes the distinction between combing wool and clothing wool, according to length of staple, isn't that correct?

A. If he pools it he does.

Q. Well, most of them do do that, do they not?

A. No, sir.

Q. A large proportion of them do, do they not?

A. Not half of them.

Q. Well, that half, anyway, pretty clearly understands the distinction between combing wool and clothing wool; that is correct?

A. I don't know whether the average farmer pays much attention to it.

Q. It is a part of his transaction when he pools his wool?

A. He don't go into that part of it.

Mr. SHARRETTS. That is all.

General Appraiser MCCLELLAND. Isn't it a fact that the average farmer just takes his clip and sells it as is?

The WITNESS. That is it. He understands it to be clothing wool, all of it.

General Appraiser MCCLELLAND. He sells it just as it is without regard to name or anything else?

The WITNESS. Absolutely; as wool.

By Mr. LAWRENCE:

Q. You said, I believe, that you have come in contact with ten or eleven thousand producers annually?

A. Yes, sir.

Q. Can you state whether or not it is a matter of common understanding amongst producers that the term clothing wool is understood to mean, as you have stated, all wool used in the making of clothing?

A. Yes.

Mr. SHARRETTS. That is objected to. This witness can not testify as to common understanding.

General Appraiser MCCLELLAND. I made the ruling on the same question this morning, and I will have to sustain the objection.

Mr. LAWRENCE. Exception. I offer to prove that the witness if permitted to answer would state that as a matter of common repute amongst wool producers, that the term "clothing wool" embraces all wools used in the making of clothing regardless of length of staple.

Mr. SHARRETTS. If your honor please, I don't think that answer should be written into this record.

Mr. HOPPIN. What is the fact?

Q. What is the fact? Based upon your relations with ten or eleven thousand wool producers, will you state whether or not the common understanding of the producers of the meaning of the term "clothing wool" is as you have defined it?

58 Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. Now, I offer to prove that if the witness were permitted to answer he would state that the common understanding amongst wool producers is that the term clothing wool embraces all wools used in the manufacture of clothing, regardless of the length of staple.

General Appraiser McCLELLAND. In order that you may have the full benefit of the board's ruling, I want to say that the ruling was based upon the idea that this witness can not state what the understanding or the operation of the minds of eight or ten thousand people as to common understanding was.

Mr. LAWRENCE. A commercial witness is called to qualify, to testify to the universal trade understanding of the term. Now, if that is admissible, why is not the testimony of a man as to the common understanding of a community likewise admissible?

General Appraiser McCLELLAND. The one is based upon actual experience and trade transactions.

Mr. LAWRENCE. And the other based on actual immediate personal contact.

General Appraiser McCLELLAND. Rather than what some one else thinks on that question.

Q. Based upon your personal experience, in your contact with wool growers, is it—state whether it is—a matter of common understanding that the term "clothing wool" embraces all wools commonly used in the manufacture of clothing, regardless of the length of the staple?

Mr. SHARRETTS. That is objected to on a number of grounds—first, that it is leading; second, it is incompetent, irrelevant, and immaterial, and the witness is not qualified to answer.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. I offer to prove, based upon the witness's personal experience and contact with woolgrowers, that if permitted he would testify that it is the common understanding among woolgrowers that the term "clothing wool" embraces all wools commonly used in the manufacture of clothing regardless of the length of staple.

Q. Now, Mr. Warner, you spoke of the fact that the association graded wools for the purposes of the mills, is that right?

A. Yes, sir.

Q. Is that matter of grading recognized and applied by the wool growers themselves in their ordinary transactions?

A. They don't pay any attention to it. That is the trouble.

Mr. LAWRENCE. That is all.

59 EDWARD L. MOODY, recalled as a witness for the United States, being duly sworn, testified further as follows:

By Mr. HOPPIN:

Q. Before the court took a recess, I understood you to say that you have been a producer of sheep for some 45 years?

A. Yes, sir.

Q. Basing your answer on your experience as a producer and grower of sheep, do you know what the term "clothing wool" means?

A. Why, only the conception we have always had of it in years gone by.

Q. What is your understanding of the term "clothing wool"?

Mr. SHARRETTS. That is objected to as incompetent and immaterial.

General Appraiser MCCLELLAND. Objection overruled. You may take his individual understanding.

Mr. SHARRETTS. Now, if your honor please, the witness has not been shown to be familiar with all wools grown in the State of New York. I think that is hardly responsive to the question, and ask that it be stricken out.

Mr. HOPPIN. The witness has shown that he is a producer of wools and has been for some 45 years.

Mr. SHARRETTS. He has 250 sheep.

General Appraiser MCCLELLAND. He is not giving his personal understanding. He answers your question by saying that "all wools grown in the State of New York." What is your understanding of the term "clothing wool"?

The WITNESS. My understanding of the term "clothing wool" is all wools that are commonly used in making clothing.

Q. How long has your understanding been, for how many years has that been your understanding of the term "clothing wools"?

A. That always has been my understanding.

Q. For how many years?

A. For 40 years

General Appraiser MCCLELLAND. How old are you?

The WITNESS. Fifty-nine years old.

Q. And is this term, your understanding of this term, regardless of the length of fiber?

A. Yes, sir.

Q. It includes all wool regardless of the length of fiber?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser MCCLELLAND. Go ahead.

Q. And is your understanding of this term based on your association with other producers in the State of New York?

Mr. SHARRETTS. That is objected to.

A. Yes.

General Appraiser MCCLELLAND. He can only give his individual views.

70 Mr. HOPPIN. If your honor please, he is engaged in producing sheep.

General Appraiser MCCLELLAND. Yes; he is a farmer who raises sheep.

Mr. HOPPIN. He is associated with other sheep producers in the association.

General Appraiser MCCLELLAND. He can't answer as to common understanding with other people.

Mr. SHARRETTS. I move that the answer such as he made be stricken from the record.

General Appraiser MCCLELLAND. Yes; strike it out.

Mr. HOPPIN. I take exception to your honor's ruling. I ask the question again.

General Appraiser McCLELLAND. You have had three exceptions to that very form of question. One is as good as a million. If the board is wrong, you have the benefit of your exception on appeal. There is no use in asking the same question all the time. I have stated very clearly to you that in my view this witness has a right to testify to what he believes to be the ordinary term, but he can't testify as to what other people understand to be the common meaning.

Mr. HOPPIN. If your honor please, he said he has had various transactions with other producers. In the court of those transactions they have a common understanding of the term "clothing wool." He is willing to testify that that common understanding of the producers with whom he is associated means all the wool regardless of the length of staple. It seems to me that a man can base an answer on personal experience.

General Appraiser McCLELLAND. The testimony already in as to the position and views of the producers does not justify that conclusion. Go ahead.

Mr. HOPPIN. I will make the same effort to prove as was made in behalf of the former witness.

General Appraiser McCLELLAND. All right.

Q. Now, Mr. Moody, since recess have you had casion to examine Exhibits 1 to 12?

A. Yes, sir.

Q. Have you in the course of your experience produced wools similar to the wool contained in Exhibits 1 to 12?

A. Yes, sir; quite some of it.

Q. Based on your personal experience, can you say, after an examination of those exhibits, whether or not they come within the term "clothing wool," as understood by you?

Mr. SHARRETT. That is objected to.

61 General Appraiser McCLELLAND. I will allow the question.

Mr. SHARRETTS. First of all, the witness has himself stated that he is not qualified to pass on the qualities of the wools.

Mr. HOPPIN. He has not so stated.

Mr. SHARRETTS. He has so stated, definitely, in his own language, that he was not qualified as to the grades of wool.

General Appraiser McCLELLAND. Giving his personal understanding. Objection overruled.

Mr. SHARRETTS. Exception.

A. They do.

General Appraiser McCLELLAND. Have you changed your mind since this morning? I understood you to say that you did not raise any wools like these samples.

Mr. HOPPIN. He did not have any opportunity to examine them, if your honor please.

The WITNESS. I made a rather cursory examination of these wools, and I think they are quite similar to the wools that we produce.

They are foreign wools, and foreign wools and domestic wools have some different characteristics. That was what I was hedging on this morning.

General Appraiser McCLELLAND. That reconciles his testimony; but for that we would have two statements by the witness in conflict.

Mr. HOPPIN. He qualified that.

General Appraiser McCLELLAND. I am giving him a chance to qualify it. I am trying to help you out.

Q. In the course of your experience have you come in contact with many producers of wool?

A. Why, I presume I have come in contact with three or four hundred different ones a year.

General Appraiser McCLELLAND. Do you meet them once a year?

The WITNESS. Why, during the year.

Q. How did you dispose of the wool which you produced during this period?

A. Up until about five years ago, in 1919, if I remember correctly, it was always sold to the local dealers. Since then it has been put through our association.

Q. Up to the time it was put through the cooperative association, did you sell it as clothing wool?

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. How did you sell it up to that time?

The WITNESS. We sold it at a flat price, as we understood it, as clothing wool.

62 Q. With reference to Exhibit 5, would you say that was suitable or unsuitable for clothing?

Mr. SHARRETTS. That is objected to. The witness has not been qualified on that point, in any shape or manner.

The WITNESS. I would say it is suitable for clothing.

Mr. SHARRETTS. He has not been qualified as a manufacturer.

General Appraiser McCLELLAND. He said that over and over again. His idea is that all wool——

Q. Would you say that it is suitable for clothing?

Mr. SHARRETTS. Objected to. He has not indicated that he ever heard of the word "combing." It is immaterial.

General Appraiser McCLELLAND. Do you know any such wool as "combing wool"?

The WITNESS. Yes, sir; as a mill term.

Q. Do you speak of it in connection with your association business?

A. Yes, sir.

Q. Will you state whether in your opinion it is suitable for combing purposes?

A. The sample——

General Appraiser McCLELLAND. On that point he has not been qualified at all as to what wools would be suitable for combing and what are not. He has not shown a particle of experience along that

line. So far as this witness is concerned, he is a producer of wool and some of his fellow-producers have formed an association. They hire competent men to grade the wool and then sell it. That is all. You don't pretend to know anything about combing wool from actual experience?

The WITNESS. I know what combing wool is; yes. It is a certain length, capable of being combed.

By Mr. SHARRETTS:

Q. Mr. Moody, I understood you to say that you have 250 sheep, is that correct?

A. Yes, sir.

Q. What is your main business?

A. Well, my main business is fruit growing and sheep raising.

Q. Which of those two is the greater, the fruit growing or the sheep raising?

A. Sometimes one is most profitable and sometimes the other. It varies.

Q. Have you ever described yourself in advertising or anything of that kind as a sheep raiser, or a similar term to that?

A. As a sheep breeder of fancy sheep.

Q. As a sheep grower, or sheep raiser or breeder?

A. I have never advertised myself in any way as a producer of sheep.

Q. Where is your farm?

A. At Rushville, N. Y.

63 Q. From these 250 sheep, how many pounds of wool a year do they produce, approximately?

A. Well, they approximate this year from 8 to 8½ pounds to the head. They vary somewhat in different years, according to the age of the sheep also.

Q. What kind of sheep are they?

A. Well, the bulk of them are western grade yews, and a portion of them are Pennsylvania Delaines.

Q. Have you ever consigned any of your wool to McMurtrie of New York?

A. Not individually.

Q. Not from your 250 sheep, you mean?

A. Well, may I qualify my statement here?

Q. I think I see what you mean. You mean that it may have gone into a pool to him?

A. It went into a pool and went to McMurtrie's hands.

Q. But you as an individual have never consigned any to him?

A. No, sir.

Q. When this wool has been consigned to McMurtrie, have you received any statement from the consignment from him—a settlement statement?

A. I never received any statement, any settlement statements from Mr. McMurtrie; no, sir.

Q. Do you know, as a matter of fact, whether that wool was graded into combing and clothing, according to the length of staple?

Mr. HOPPIN. I object to that.

Mr. SHARRETTS. I am asking if he knows. He may not know.

Mr. HOPPIN. This witness was not qualified as to the grading of wool.

General Appraiser MCCLELLAND. He did not ask him if he graded it. He asked him if he knew when it was graded, whether it was sold into combing and clothing. Objection overruled.

Mr. HOPPIN. Exception.

WITNESS. It was my understanding that it was.

Q. It was graded, was it not, according to length of staple, into clothing wool and combing wool; is that correct?

Mr. HOPPIN. I object to all of this testimony. This witness was not asked any questions at all with regard to the grading of wool on the direct examination.

General Appraiser MCCLELLAND. This is cross-examination.

Mr. HOPPIN. It is cross-examination on an entirely different subject.

General Appraiser MCCLELLAND. Objection overruled.

Mr. HOPPIN. I would like to have an exception to all of this.

General Appraiser MCCLELLAND. He has a right to break down this witness's examination by any reasonable cross-examination.

64 Mr. HOPPIN. He must confine himself to the testimony on the direct and not lead him on other subjects. He is qualifying him as his own witness.

A. That was my understanding.

Q. And for the past five years all the wool from your section that has gone through the association has been marketed in that way; isn't that correct?

A. Yes, sir.

Q. That is, graded into clothing wool and combing wool according to the length of staple?

A. According to the mill terms; yes, sir.

Q. What do you mean when you say "mill terms"?

A. Well, the way that the mills want to buy it.

Q. Don't the dealers buy it that way, too?

A. No, sir; not in our section.

Q. You have never sold these? You have no information with respect to sale to the dealers, for instance, in Boston or Philadelphia?

A. We have sold a few lots to dealers, when the dealer's price was higher than we could obtain from the mills.

General Appraiser MCCLELLAND. Didn't I understand you to say that the wools that were graded had been consigned to sell?

The WITNESS. No, sir.

General Appraiser MCCLELLAND. Sold before being delivered?

The WITNESS. Sold before being delivered.

Q. Some were consigned—I understand those were consignments to Mr. McMurtrie?

Mr. HOPPIN. He says that he had not consigned them.

A. That was before the State organization was perfected. That was a local association; a little local community affair; a county affair.

Q. Were you a member of that?

A. I was a member of that.

Q. Were you an officer of that?

A. I think I was a director at that time.

Q. Are you an officer of the organization of the New York State organization?

A. Yes, sir.

Q. What is your position?

A. Director and president.

Q. I understood you to say—how long have you held that position?

A. Since 1920.

Q. Now, you personally have had an understanding of this distinction between combing wool and clothing wool, combing wool being the long staple and the clothing wool being the short staple. You personally have been familiar with that distinction during the past five years?

A. I have; ever since I have been preparing wool for the market.

65 Q. Ever since you have been familiar with the market?

A. Yes, sir.

General Appraiser McCLELLAND. That would be about how long?

The WITNESS. Since 1920, since I went with the State organization.

Q. Now, I understood you to say that these exhibits, Nos. 1 to 12, were within your understanding of clothing wool, is that correct?

A. Yes, sir.

Q. Looking at any one of these exhibits (referring to the exhibits in Suit 2245), look at Exhibit 2.

(The witness examines the exhibit referred to.)

Q. (continuing). That is combing wool, isn't it?

A. According to the mill terms, the way that we prepare it for the market, it is a combing wool.

Q. And when anyone prepares it for the market, it is a combing wool?

A. Yes, sir.

Q. If he prepares it for the market, it is not a clothing wool?

A. No, sir.

Mr. HOPPIN. I submit that these questions are all irrelevant. He has not been qualified.

General Appraiser McCLELLAND. In answer to your question, he says that he knew clothing wool.

Mr. HOPPIN. On objection of my friend here he was not allowed to answer.

General Appraiser McCLELLAND. Oh, yes; I overruled it.

Mr. HOPPIN. He did not answer the question. He said that he was not qualified to answer. I object to all of this line of questions.

General Appraiser McCLELLAND. I am just as liable to be wrong in my recollection as anybody else.

Mr. HOPPIN. I object to any commercial testimony at this time on the ground that the witness is not qualified. I take exception to your Honor's ruling on the ground that this witness is not qualified in any way to answer as to commercial testimony of this kind.

General Appraiser McCLELLAND. He is not. He has not been asked any commercial questions that I know of. All the questions have been ruled upon.

Mr. HOPPIN. I would like an exception.

Q. Now, Mr. Moody, looking at that Exhibit 2 once more, within your experience that wool has never been dealt in in any form under the name of clothing wool?

A. Yes, sir.

(At this point General Appraiser Sullivan entered and took his place on the bench.)

66 Q. Can you state the specific transaction where that was sold under the name of clothing wool?

A. It is all sold under the name of clothing wool.

Mr. HOPPIN. If your honor please, as a technical matter, too, I would like to have a ruling on my objection on this testimony by the full board.

General Appraiser McCLELLAND. You made no objection to this question. I can only rule on objections as made.

Mr. HOPPIN. I am objecting to all of this line of commercial testimony. Your honor has already ruled that this witness was not qualified to testify as a commercial witness.

General Appraiser McCLELLAND. I understand counsel for the importer to be talking about a particular transaction of his own.

Mr. HOPPIN. He has testified as to these exhibits here, as to grading, etc. I would like to have a ruling by the full board.

Mr. SHARRETTS. This man has testified on his direct examination that this wool was all clothing wool. I would like to know under what circumstances and where that name was used and where he has heard it all.

General Appraiser McCLELLAND. He did testify that it was all clothing wool; didn't you so testify?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. He is asking you if you know of a single transaction of your personal knowledge where such wool was sold as clothing wool. That is proper cross-examination.

Mr. SHARRETTS. During the past five years.

The WITNESS. During the past five years we have been using the mill term.

Mr. SHARRETTS. That is not responsive.

General Appraiser McCLELLAND. Strike it out; that is not responsive. Do you know of a single transaction where wool like this has been sold as clothing wool during the past five years? Either you do or you do not.

The WITNESS. No; I don't know, during the past five years.

Q. By anyone; producer, dealer, or anyone else?

Mr. HOPPIN. This witness has not been qualified as a producer or dealer.

A. I don't know.

Q. Do you know of any transactions in the past five years where that particular wool of that kind has been sold as combing wool?

A. Yes.

Q. Plenty of them, are there?

A. Yes, sir.

67 Q. Is that true of all of these other exhibits here—Nos. 1 to 12—your testimony with respect to No. 2? Does that apply equally to those other exhibits you have examined, Nos. 1 to 12?

A. I think so.

By Mr. HOPPIN:

Q. Will you examine Exhibit No. 5 and tell me whether in your experience that is suitable for combing?

Mr. SHARRETTS. That is objected to as immaterial.

Mr. HOPPIN. You qualified him as your own witness.

Mr. SHARRETTS. I never qualified him to answer technical questions as to manufacture. I asked him how it was sold within his particular knowledge and transactions. That goes into the knowledge of technical mill machinery.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

Q. Will you answer the question, Mr. Moody, please?

A. I would say part of it was and part of it was not. Part of it seems to be tender.

Mr. HOPPIN. That is all.

By Mr. SHARRETTS:

Q. Mr. Moody, when you say suitable for combing what do you mean?

A. Suitable to go through the mill process of combing.

Q. Have you ever been in the manufacturing business employing combing machines?

A. No, sir.

Mr. HOPPIN. If your honor please, I don't want to object all the time to Mr. Sharretts's question, but Mr. Sharretts has qualified this witness on technical grounds, and I object to his trying to break down his own witness.

General Appraiser MCCLELLAND. This particular sample he has testified that was suitable for combing. Objection overruled.

Mr. HOPPIN. Exception.

Q. Have you ever been connected with a combing mill in any way?

A. No, sir.

Mr. SHARRETTS. That is all.

EDWARD MOIR, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

By Mr. LAWRENCE:

Mr. Moir, what is your business?

A. Manufacturer of woolens.

Q. What is your business address?

A. Marcellus, N. Y.

Q. And what is your firm name?

A. Crown Mills.

68 Q. How long have you been in the manufacturing business?

A. Since 1870.

Q. 1870?

A. Yes.

Q. What is the raw material which you use in your manufactures?

A. Wool.

Q. From all parts of the world do you get wool that you use?

A. Wherever we can get it cheap.

Q. Generally speaking, all over the world?

A. All over. I think I have used all kinds of wool, from all over the world.

Q. That includes domestic wool, does it?

A. Oh, yes.

Q. Do you use a great deal of domestic wool?

A. Oh, yes; six or seven hundred thousand pounds a year.

Q. Do you manufacture woolens or worsteds?

A. Woolens.

Q. Now, during your experience, or early in your experience, after 1870, did you acquire knowledge of the term "clothing wool"?

A. Oh, before that.

Q. How long before?

A. I went into the mill in 1862.

Q. You went into the mill at 1862?

A. Yes.

Q. Did you know the term "clothing wool" at that time in 1862?

A. It was never used; no.

Mr. SHARRETTS. If your honor please, I think that is——

General Appraiser MCCLELLAND. He don't know it.

Q. Do you now know the term "clothing wool"?

A. Yes, sir.

Q. How long have you known the term "clothing wool"?

A. Well, since 1867.

Q. What has been the meaning of "clothing wool," as you have understood since that time?

Mr. SHARRETTS. If your honor please, one moment. That is going back to 1867. What may have been the meaning of it then has little relevancy to the act of 1921. If he brings the witness somewhere near the time of the passage of the act, all right; but he has not been qualified as having bought and sold.

General Appraiser McCLELLAND. He is asking for his personal understanding. The question is permitted.

Q. Will you please state what the term "clothing wool," as you understand it, includes.

A. Wool suitable for clothing purposes.

Q. Has that always been your understanding of the term?

A. Always.

Q. What kinds of wool do you use in the manufacture of your woolens with respect to length of staple?

A. We use wool as long as these, sometimes.

Q. Like Exhibits 1 to 12?

A. Yes; sometimes we use them as long as that.

69 General Appraiser McCLELLAND. Generally speaking?

The WITNESS. It depends on what the market was. That controls what we use.

Q. Now, have you bought and utilized in your mills wools comparable in character to Exhibits 1 to 12?

Mr. SHARRETTS. There is nothing to indicate that the witness has examined these exhibits.

Mr. LAWRENCE. I will withdraw the question.

Q. Have you examined Exhibits 1 to 12?

A. Yes, sir.

Q. Have you observed the character and quality of the wool?

A. Yes.

Q. Have you bought and utilized wool possessing the characteristics of these wools?

A. Yes; lots of them.

Q. Now, please state whether such wools were included in the class of clothing wool as you have defined the term throughout your experience.

A. They were always included in the term.

Q. I believe you stated that you used wools of that length of staple in your manufacture of woolens?

A. Yes, sir.

Q. For how many years?

A. I have been using them as long as these wools are now.

Q. For how many years back?

A. As long as I have been in the business.

Q. Forty years?

A. The first thing you know you will get my age.

Q. I don't want to embarrass you before these gentlemen. May I safely say 40 years without embarrassing you?

A Oh, yes; 50 years.

By Mr. SHARRETTS:

Q. Mr. Moir, you don't use any worsted machinery in your plant at all, do you?

A. No, sir.

Q. Have you examined these Exhibits 1 to 12 as to quality?

A. In a casual way; yes.

Q. Do you ordinarily use in your processes wool identical with these Exhibits 1 to 12 in quality?

A. Yes, sir: absolutely.

Q. Where do you buy your wools?

A. You mean in this country?

Q. Yes.

A. Sometimes we import them, but we buy them in Boston, New York, Philadelphia, Chicago, St. Louis, and in the State of New York.

Q. You are familiar, of course, with the quotations, market quotations, and market descriptions?

A. If we were not, we would not be in business.

Q. Of course, you have seen the expressions "clothing wool" and "combing wool" used?

A. Yes, sir.

70 Q. What was your understanding of their meaning as used?

A. That it was all clothing wool.

Q. By that you mean the short-staple wool was a clothing and the long-staple wool was a combing wool; is that correct?

A. No.

Q. That is according to the quotations?

A. No. That is the graded wool which uses the rejects and the shorter staple. If we are confined to that, we would have to shut up about 10 months in the year. That is what would happen.

Q. Now, coming back to the proposition as these wools appear in the market and as they are described in the markets of the world, the term "clothing wool" is described as short-staple wool?

A. Not always.

Q. But to distinguish from the combing wool, which described the longer staple?

A. Not always.

Q. Will you distinguish in your own words between clothing wool and combing wool?

A. You know in the tariff act of 1867—just a minute, I want to give the court some information——

General Appraiser McClelland. Won't you answer the question, Mr. Moir, what is the distinction between clothing wool and combing wool?

Answer. For instance, we can use wool that will comb, which the comber can't use.

General Appraiser McClelland. I know; but there are two grades of wool, one known as clothing and the other as combing. What we want for our enlightenment is to know the difference between the two—why the distinction?

The Witness. They are all clothing wool, but for combing purposes on the Bradford system they want a good long wool. By the French system they take a much shorter wool, and what is left, if it is called clothing wool, as we sometimes find, we would not get enough of it to run a month in a year.

General Appraiser McCLELLAND. There is wool known as clothing wool and what is known as combing wool. What is the distinction?

The WITNESS. Clothing wool is the shorter wool, which the comber does not want.

General Appraiser McCLELLAND. And the long-staple wool is the combing wool?

The WITNESS. Is suitable for their machinery.

General Appraiser McCLELLAND. Is not what is known as combing wool?

The WITNESS. Generally, it is suitable for the Bradford system or for the French system, which is the short.

71 General Appraiser McCLELLAND. There is no such thing as short-staple wool known as combing wool, is there?

The WITNESS. On the French combing machines.

General Appraiser McCLELLAND. No; forgetting about the French combing machines, but what is known as combing wool in the American market?

The WITNESS. Well, I can't change the conditions of the market, because you will find an inquiry for French combing, and the same minute an inquiry for Bradford. It makes its own distinction.

Q. But, Mr. Moir, none of these Exhibits 1 to 12 would be generally known as clothing wood, would they?

A. It would depend on what you want to use them for.

Q. I mean the way they are known, not the way they are used, among people handling them, and knowing them as those particular Exhibits Nos. 1 to 12, would not be generally known as clothing wool?

A. That is a trade designation.

Q. They would not be generally known as a clothing wool?

A. I don't know about that.

Q. Bearing in mind the division into clothing wool and combing wool, as the terms are known and used, these Exhibits Nos. 1 to 12 would not be known or termed "clothing wool," would they?

A. Why, the people that import those wools they import them largely in combing numbers, that is to be used as combing wool by the worsted process.

Q. You mean by that that they are all used to make clothing out of?

A. Yes, sir.

Q. But the term "clothing wool" is not applied to them? They are not known as clothing wool?

A. I would not say that. I know them as clothing wool.

Q. You have in mind their use?

A. Oh, yes; because they are used for that.

Q. Because they are used to make clothing out of, but the way they are known, the names?

A. I would not go so far as to say that.

Q. The name applied to them is not clothing wool?

A. They might call the wool a combing wool, and if they can't sell it to the worsted men they will sell it to me.

Q. In dealing in wool generally throughout this country and, as far as that is concerned, throughout the world, these Exhibits Nos. 1 to 12 would not be known under the name of "clothing wool"?

A. That is the way you look at it.

Q. Do you believe that they would be known under the name of "clothing wool"?

72 A. I am speaking from my own experience. I don't ask them whether it is combing or clothing. I look at the sample. I don't ask whether it is clothing or combing.

Q. It is not sold to you under the name of "clothing wool," that is, Exhibits Nos. 1 to 12?

A. Sure, it is.

Q. By whom—who would use that name "clothing wool" as applied to Exhibits 1 to 12?

A. There is No. 5 there: that would probably go to the kind of business such as we have.

Q. Who would call it "clothing wool"?

A. I don't know. They would all call it "clothing wool."

Q. Is it ever quoted as clothing wool in any market reports?

A. It is quoted as Australian or Montevideo or Argentine.

Q. Combing wool?

A. Some people do and some do not.

Q. Is it ever quoted as clothing wool any place?

A. Not recently.

Q. Well, within the past 5 or 10 years?

A. No; not within the past 5 or 10 years. That is a trade term used to distinguish the length of the wool.

Q. But that trade term "clothing wool" is applied to this wool and combing wool is not?

A. Not to all of that.

Q. I am speaking of Exhibits 1 to 12.

A. If it is all as good length as that they would say that that is a fine combing wool.

Q. They would never say clothing wool about those Exhibits Nos. 1 to 12?

A. I don't know. It never comes up with us. I can only speak of what I know myself.

By Mr. LAWRENCE:

Q. Approximately what quantity of wool do you consume annually?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. That would depend on the conditions. Some years as high as a million and a quarter.

Q. Is there any distinct line of demarcation in the length of staple as between carding wools and combing wools?

A. No fixed line; each grade is separate.

Q. You spoke of French combing wool as being used for clothing, did you not?

A. Yes.

Q. Is that a wool that is combed in the process of manufacture?

A. Yes.

Q. Is it a long or a short staple wool?

A. It is shorter.

Q. About how long is it?

A. An inch and a half.

Q. That is combing?

A. A little longer than that.

Q. As to all of the wools which you handle and utilize, will you please state whether they are known as clothing wools as you understand the term?

73 Mr. SHARRETTS. That is objected to as repetitious. Besides that, it is leading, what it is known as.

General Appraiser MCCLELLAND. Objection overruled.

A. We use what is known in the trade as clothing wool, also combing. We use them both.

Q. But regardless of the length of the staple, do you still regard them as clothing wool?

Mr. SHARRETTS. That is objected to. The witness has answered the question.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception.

Q. Does the length of staple have any bearing upon your definition of the term "clothing wool"?

A. No.

By General Appraiser MCCLELLAND:

Q. Mr. Moir, in wool circles there are two classes of wool recognized, at least, one clothing and the other combing, isn't that so?

A. No; there are three in the clothing wool. There is the Bradford system combing, the French combing and the rejections from these two, and then there is the carpet wool.

Q. Is there such a thing known in this country as clothing wool among wool men?

A. They use the term to designate that it is a short throwout of the longer wool.

Q. Now, then, there is another class of wool known as combing wool?

A. Yes; the combing process.

Q. That is the longer staple, isn't it?

A. Yes, sir.

Q. Into which one of the groups do samples Exhibits 1 to 12 belong?

A. I could not say offhand; most of them would go into the Bradford system.

Q. I don't know anything about the Bradford system. You have defined two classes of wool, clothing with the short staple and combing, the long staple?

A. Judge, I don't so understand, that I defined clothing wool was always short wool.

Q. Whatever clothing and combing wool is there is a distinction between the two?

A. To people in the trade.

Q. Well, now, under what group would you classify samples Exhibits 1 to 12?

A. Most of them are the Bradford system; combing.

Q. They are combing wool regardless of the Bradford system? We are talking in American parlance now. Are they combing wools or not?

A. They are combing wools, either Bradford or French, as the case might be.

Q. But they are combing?

A. And still they are clothing.

74 By Mr. LAWRENCE:

Q. Mr. Moir, of the amount of wool that you use, what are the respective percentages of short staple and long staple?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. You can't buy such an awful lot of very short wool.

General Appraiser MCCLELLAND. Strike it out as not responsive.

Q. Can you approximate?

A. We use about 50 per cent that would comb by the Bradford system in my business.

Q. And you utilize all of that in making woolens; is that right?

A. Yes, sir.

Mr. LAWRENCE. That is all. I simply want to offer in evidence the report of the Committee on Ways and Means, submitted with the emergency tariff bill.

Mr. SHARRETTS. That is a public document. First, it is not admissible in evidence. It is a report of the Committee on Ways and Means that he is offering in evidence. I object to it.

General Appraiser MCCLELLAND. That is a public document and you have a right to refer to it in your brief. It is a matter of argument as to what weight shall be given to the opinions of the members of the Ways and Means Committee.

Mr. LAWRENCE. I can refer the board to a decision of the Supreme Court where it has approved of the practice of admitting public documents.

General Appraiser MCCLELLAND. The board will leave this question open and give you an opportunity to brief it.

Mr. SHARRETTS. The board has ruled out public records of any kind that we have offered and over my friend's objection here. Now, he is offering what he himself objected to.

General Appraiser McCLELLAND. The board is not going to pass on this question now, but will give you an opportunity to brief it, as to whether the report of the Ways and Means Committee is competent as evidence. I will grant you time for briefs.

Mr. SHARRETTS. I object further because it is purely an academic question. I object to the delay that my friend is producing by introducing a question of this kind.

Mr. LAWRENCE. May I have the pamphlet marked for identification?

(There being no objection, the report referred to was marked "Exhibit 3 for indentification, protest No. 949137," etc., of this date.)

Mr. LAWRENCE. We rest subject to the disposition of the motion.

Mr. SHARRETTS. Of course, I think the importers should have the right or opportunity to put in rebuttal testimony. I ask for
75 five minutes to confer with my associates to see whether or not we wish to put in rebuttal testimony.

General Appraiser McCLELLAND. Let it be understood then that if the importers decide that they do not desire to put in further testimony, that the case will be submitted subject to the board's decision on this motion.

Mr. LAWRENCE. If no more testimony is put in, the Government would like 30 days in which to file a brief.

Mr. SHARRETTS. Why 30 days? We are making every effort to hurry the matter up.

Mr. LAWRENCE. Perhaps we can do it in a shorter time.

General Appraiser McCLELLAND. You may take 15 days each.

NEW YORK, *May 29, 1924.*

By consent the case was continued to June 9, 1924, at 2 o'clock p. m.

NEW YORK, N. Y., *June 9, 1924.*

Present: General Appraiser Sullivan, General Appraiser Brown.

Appearances:

Sharretts, Coe & Hillis, attorneys for the importers, by Edward P. Sharretts, Esq.; Waterhouse & Lockett, by William E. Waterhouse, Esq., counsel for the importers. George J. Puckhafer, Esq., and John Francis Strauss, Esq., associate counsel for the importers.

William W. Hoppin, Esq., Assistant Attorney General; Charles D. Lawrence, Esq., and Fred J. Carter, Esq., special attorneys for the United States.

Colloquy between General Appraiser and counsel

Mr. HOPPIN. If the court please, at the last hearing both sides rested. The Government has been trying sometime to get various witnesses, to find out who come to New York. It is very difficult for everybody to find time to come, and in the course of our correspondence we corresponded with this witness, and the witness that

we now have here ready to present to your honors; at that
76 time we did not know that he was available. Since that time,
in the last few days we found out that he could come to New
York. He is here and the Government asks permission of the board
to put in his testimony. The testimony is similar to the testimony
already taken by the other witnesses. There is no element of sur-
prise or anything of that kind. As your honors know, it is cus-
tomary to do this.

General Appraiser BROWN. Why was the case set for to-day if both sides had submitted?

Mr. SHARRETTS. I don't think my friend meant that just exactly. The case was set for to-day to give us an opportunity to put in testimony to rebut what the Government produced.

General Appraiser BROWN. I think that was for all purposes.

Mr. SHARRETTS. I think not. We had naturally understood that they had put that testimony in, and that we were to get testimony to rebut that which the Government put in. As an initial proceeding we put in the record in the other case as to the identification of the merchandise.

General Appraiser BROWN. Do you object?

Mr. SHARRETTS. Yes; I think we are entitled to put in our case on the presumption that the Government has rested. We only have a couple of hours.

General Appraiser BROWN. As far as the order is concerned on the assignment, you might be entitled to precedence, but I will hold in the first place that an assignment like that impliedly left it open for both sides, and if not I will exercise my discretion and so permit it on the claim advanced by Government counsel. I will let you put your witnesses on first, and then his witness wait until you get through, to avoid inconvenience to you.

Mr. SHARRETTS. That, of course, puts us in the position where we would have to meet something that has not been put in yet.

General Appraiser BROWN. Why don't you put in yours in the first place?

Mr. SHARRETTS. One of them is from out of town. I don't know how long it will take. It may take all the afternoon.

Mr. HOPPIN. I would be very glad to make the examination of this witness very short, if my friend will make his cross-examination as short as the direct will be.

General Appraiser BROWN. You can't expect him to promise to do that.

Mr. HOPPIN. I am merely making that statement.

General Appraiser BROWN. I think you had better hear his witness first.

Mr. SHARRETTS. Here is the record itself, as to what Mr. Hoppin
said at the last session. The Government says that it rests
77 subject to the disposition of the motion then pending. Then
the only thing left for us to do was to put in rebuttal testi-

mony. They offered in evidence some report of the Ways and Means Committee, something of that kind——

General Appraiser BROWN. And the board reserved decision on that.

Mr. HOPPIN. Yes; both sides were to put in briefs.

General Appraiser BROWN. I am going to let the witness testify in view of that ruling. Do you desire to have him testify first?

Mr. SHARRETTS. As I understand, it is going to be very brief testimony, and I don't want to delay my testimony. As my friend says, it is along the same lines as already put in. It is going to be cumulative, of course.

General Appraiser BROWN. You will call the Government witness.

Mr. LAWRENCE. Yes; both parties seem to have been given time to file briefs on the motion to admit the report of the Ways and Means Committee.

General Appraiser BROWN. On the motion to file the committee report. Go ahead, Mr. Hoppin.

Mr. LAWRENCE. We have our brief here to file on the part of the Government.

Mr. SHARRETTS. I would not like to argue the question of the admission of that document right now. I think you had better go ahead with the testimony.

Mr. LAWRENCE. He had an opportunity to submit his brief. In view of the fact that the opposition has not theirs ready, I would suggest five days in which to file it.

General Appraiser BROWN. You had better brief it.

JOSEPH E. HENDERSON, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

By Mr. LAWRENCE:

Q. Henderson, where is your place of business?

A. Hickory, Washington County, Pa.

Q. What is your business?

A. I am a farmer, sheep raiser, and wool grower.

Q. How long have you been engaged in that occupation?

A. All my life. I expect it would be about 35 years.

Q. How many head of sheep do you keep ordinarily?

A. Well, from 200 to 500; they vary in number.

Q. What is the most you have had at one time?

A. Well, I suppose about a thousand.

78 Q. And do you clip the wool that they produce?

A. We clip the wool from some of them, not all of the sheep that we handle and deal in.

Q. About how many pounds of wool do you handle of your production?

A. Well, some years more and some less; from a thousand to 2,500 or 3,000 pounds.

Q. Do you live in a wool-growing community?

A. I do.

Q. Do you come in contact with wool growers?
A. I do.
Q. Are you associated with any organization of wool growers?
A. Yes.
Q. What is that organization?
A. The Tri-State Sheep & Wool Growers' Association—Pennsylvania, Ohio, and West Virginia.
Q. That includes Pennsylvania, Ohio, and West Virginia?
A. Yes, sir.
Q. Are you connected with any other wool association?
A. The Washington County Sheep & Wool Growers' Association of Washington County, Pa.
Q. Now, have you been producing wool for 35 years?
A. Yes.
Q. Are you familiar with the term "clothing wool" as a wool grower?
Mr. SHARRETTS. That is objected to as immaterial; what his familiarity with the term "clothing wool" is, unless it is brought within some definite rule of evidence to make it material.
General Appraiser BROWN. I was not at the last hearing except for a short while, and I am under the impression that the board has already ruled to admit that class of testimony.
Mr. LAWRENCE. They have so ruled.
General Appraiser BROWN. Subject to correction by the full board, I will admit it, giving you an exception.
(The question was read by the reporter.)
Mr. LAWRENCE. Answer "yes" or "no."
A. Am I familiar with the term? I am; yes.
Q. Now, based upon your experience as a woolgrower, will you please tell us what your understanding of that term is?
Mr. SHARRETTS. That is objected to as immaterial.
General Appraiser BROWN. The same ruling.
Mr. SHARRETTS. Exception.
A. The word "clothing wool" is a technical term as I know it.
Q. I have asked you, based upon your experience as a woolgrower, Mr. Henderson.
Mr. SHARRETTS. I don't think he should interrupt the witness.
General Appraiser BROWN. Let him answer in his own way.
79 A. Not as a woolgrower, I am not familiar with the term, only as a technical term as used by the mills, the woolen mills, or the manufacturers.
Q. I want your understanding of the term "clothing wool," based upon your experience as a woolgrower?
Mr. SHARRETTS. He said that he——
General Appraiser BROWN. That he only knew it as used by the manufacturers, that is what I understood him to say. Is not that what you said?
The WITNESS. That is what I said.

General Appraiser BROWN. Of course, he would have to answer it if you want the answer on the basis of information which he has.

Mr. LAWRENCE. I am asking him for his understanding of the term, based upon his experience as a woolgrower.

A. Not as a woolgrower, we don't understand the term "clothing wool." The woolgrowers do not understand that term.

General Appraiser BROWN. They don't use the term at all?

The WITNESS. Not a woolgrower, he would not. He would understand that all wool known as wools are for fabric, used as clothing wool, that goes into the manufacture of clothing.

Q. Will you please define what your understanding of the term "clothing" is? What it embraces?

Mr. SHARRETTS. He has stated that as a woolgrower.

General Appraiser BROWN. I will let him finish his exposition of it. He has shown the limitations of his knowledge.

Mr. SHARRETTS. As the manufacturers use it.

General Appraiser BROWN. Go ahead and answer the question.

(The question was read by the reporter.)

Mr. SHARRETTS. He has stated that he did not understand it as a woolgrower excepting as used by the manufacturers.

General Appraiser BROWN. He started to give an answer and did give an answer.

Mr. LAWRENCE. I will withdraw the question.

Q. Mr. Henderson, what do you understand the term "clothing wool" includes?

A. It includes all wool that goes into the manufacture of woolen fabrics.

Q. Does it include that which goes into carpets?

A. No, sir.

Q. And what kind of fabrics did you have in mind when you said that it was wool which goes into the manufacture of fabric?

Mr. SHARRETTS. That is objected to: the witness has not been shown—he has not shown that he has any knowledge of the wool that goes into fabrics.

80 General Appraiser BROWN. Objection overruled.

Q. What kind of fabrics did you have in mind?

A. Well, in fabrics that goes into the manufacture of clothing.

Q. And is that true, regardless of the length of staple of the wool?

Mr. SHARRETTS. That is objected to.

General Appraiser BROWN. I will let him answer that, too.

Mr. SHARRETTS. Exception.

A. Yes: that is true.

Q. Have you examined Exhibits 1 to 12, Mr. Henderson, over in the sample room?

A. I examined some wool; that looks like the same wool I did look at.

Mr. LAWRENCE. If counsel will permit to say, I was present when Mr. Henderson examined Exhibits 1 to 12 in the sample room, and that these are the samples here.

Q. Did you examine them, Mr. Henderson?

A. Yes, sir.

Q. Will you state whether or not they would be included in the class of clothing wool as you have described it?

A. They would.

Mr. LAWRENCE. That is all.

By Mr. SHARRETTS:

Q. Mr. Henderson, the term "clothing wool," as it is used in the markets of the country where wool is bought and sold, refers to the short-staple wool as distinguished from the combing wool, doesn't it?

Mr. LAWRENCE. I don't think I qualified the witness along the lines of Mr. Sharretts's cross-examination.

General Appraiser BROWN. That is proper cross on what he was asked on the direct examination. I will overrule the objection.

Mr. LAWRENCE. Exception. The ground of my objection was that the witness was not qualified along the lines of the cross-examination.

The WITNESS. Do you mean the markets—what markets do you refer to, please?

Q. I mean the wool markets where wool is bought and sold?

A. That would be in Boston or in New York?

Q. Yes; surely.

A. Am I familiar with the term, I believe the question was?

Q. I mean as the terms are employed in such markets clothing wool means the short-staple wool, does it?

A. Yes; it does.

Q. As distinguished from the combing wool?

A. Yes.

Q. Now, you spoke in your answer to Government counsel as to the mill meaning of the term "clothing wool," didn't you?

A. I said something like this: That the mill term "clothing wool" was not known to the woolgrower; that it was all wool to him; that it was all clothing wool, such as we grow in our section of the country.

Q. But the term "clothing wool" is not a term that would ordinarily be used by the growers in wool transactions as describing wool; the term itself, the identical phrase "clothing wool," is not a term that would be used?

A. By the grower.

Q. So that he would not use the term "clothing wool" to describe any kind of wool, according to your testimony; isn't that correct?

A. That is right.

Q. Where the grower is familiar with the grades of wool that happens sometimes, doesn't it? Some growers are familiar with the grades of wool, are they not?

A. Well, they must be. Of course, I know of some that are, and know of a good many that are not familiar with it.

Q. Where they would be familiar with the grades and classes of wool they would use the expression "clothing wool" as referring to the short-staple wool, wouldn't they?

A. Yes; they would, because that is the way they have of distinguishing it.

Q. Now, with that understanding, these exhibits that you looked at—Nos. 1 to 12—are all combing wools, are they not?

A. I believe they would all pass as combing wool. I think they are long enough for combing wool.

Q. Using the expression "clothing wool" as referring to the short-staple wools and the combing wools as the longer-staple wools, these exhibits are all combing wools, are they not?

A. If I remember the samples correctly, they are long enough to be termed as "combing wool."

Mr. SHARRETTS. That is all.

Br. Mr. LAWRENCE:

Q. When you say they are long enough to be called combing wool what do you mean, Mr. Henderson?

A. Well, that the staple is long enough, as I understand the wool, to comb; in other words, it is a long-fiber wool.

Q. Yes. But does that alter the fact that it is such wool as you commonly know as clothing wool?

Mr. SHARRETTS. That is objected to as grossly leading.

General Appraiser BROWN. That is proper.

Mr. SHARRETTS. He is there leading the witness away from his other answer. It is his witness.

General Appraiser BROWN. Objection overruled.

A. No; that is all we term—as I would look at it, as clothing wool.

82 Q. Is that in accordance with the understanding you have had during your experience, running back in the wool business?

A. Yes, sir.

Mr. SHARRETTS. That is enough.

Mr. LAWRENCE. Just a moment.

Mr. SHARRETTS. Excuse me.

By Mr. LAWRENCE:

Q. Will you say whether that is the understanding of those with whom you have been in association in the wool business?

Mr. SHARRETTS. That is objected to. The witness can't testify what is within the understanding of some one else.

Mr. LAWRENCE. Your witnesses all testified to what somebody else knew as combing wool.

Mr. SHARRETTS. No.

General Appraiser BROWN. I will follow the majority ruling in the previous case and I will sustain the objection.

Mr. LAWRENCE. May I save an exception?

General Appraiser BROWN. I will give you an exception.

Mr. LAWRENCE. I offer to prove that the witness if permitted to answer the question, would testify that it was the common understanding of the community of woolgrowers that the meaning of clothing wool is the same as that expressed by himself.

By Mr. SHARRETTS:

Q. Of course, Mr. Henderson, as I understand it, this wool such as you have referred to, Exhibits 1 to 12, that is combing wool, would never be bought or sold under the name of "clothing wool," that is that term, the name "clothing wool" would never be used in connection with the wool?

A. Well, do you mean—it would depend on where this wool was bought. If this wool was bought from the grower, it would be bought largely as wool.

General Appraiser BROWN. Without any qualification, just as wool?

WITNESS. The man who bought it is supposed to know, but as far of the wool grower himself is concerned——

General Appraiser BROWN. He would not call it anything but wool?

WITNESS. But wool.

Mr. LAWRENCE. The Government rests.

83 ISAAC M. SOLOMON, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. SHARRETTS:

Q. Give your name and address to the stenographer.

A. Isaac M. Solomon, 151 West Eighty-sixth Street, New York City.

Q. Mr. Solomon, what is your business?

A. Buying and selling wool.

Q. And how long have you been engaged in that sort of business?

A. Over 30 years.

Q. Are you interested either directly or indirectly in the outcome of this case?

A. No.

Q. Are you here under subpœna?

A. Yes.

Q. Have you had any experience as a sheep grower?

A. Yes.

Q. Where was your sheep-growing business located?

A. In Utah and Idaho.

Q. Were you a practical sheep ranger?

A. Yes.

Q. Now, about how many sheep did you have on your range?

A. About 25,000.

Q. How many years were you a practical ranger and grower?

A. Ten or fifteen years.

Q. Now, have you had experience in buying wool?

A. Yes.

Q. Have you bought wool direct from the wool growers?

A. Yes.

Q. How long have you been buying wool direct from the wool growers?

A. Over 30 years.

Q. Have you personally negotiated such transactions with the grower?

A. Yes.

Q. About how many growers in the course of a year would you come in contact with in that way?

A. About 500.

Q. About 500 a year? And where have your operations been in purchasing wool direct from the growers?

A. Oh, all over the country.

Q. Where principally?

A. In the West.

Q. Did that territory embrace the principal wool-growing sections?

A. Yes.

Q. About what proportion of the wool would be produced in such sections?

A. I should say 80 or 90 per cent.

Q. Have you confined yourself to the purchase of domestic wools; that is, wools grown in the United States?

A. Yes.

Q. About how much wool have you purchased or taken on consignment from these American wool growers?

A. Oh, I have had from two to five million pounds a year.

84 Q. Now, have you purchased wool in the original bags, direct from the wool growers?

A. Yes.

Q. How long have you been purchasing wool in that way from the growers?

A. During my entire experience.

Q. Now, in making such purchases—that is, in the original bags—have you personally negotiated with the grower?

A. Yes.

Q. Will you describe just how wool of that kind is purchased from the grower, within your experience?

A. In purchasing wool from the grower in original bags it has been customary where the wool had already been shorn to open up every—possibly 10 to 15 per cent of the wool, meaning 2 bags of every 15.

Q. Well, what did you do?

A. And the wool would be opened up by the purchaser or by the party interested and graded; that is to say, for the different grades, short wool and long wool, and dissecting the wool and the entire bags that were opened.

Q. What would be the names of those?

A. Clothing, short wool would be termed as "clothing wool," and the long wool or staple wool was combing wool.

Q. Then having tested these 2 bags, say, out of 15, then would you purchase a lot of wool based upon your calculations?

A. Yes; the idea was to get a knowledge of what the percentage of staple wool was in the bags of wool, the clothing wool that was in the bags, and also as to the yield of the clip, meaning thereby the shrinkage of the wool, and in that way we would form our idea—we would get our estimate and make a price.

Q. Now, have you bought graded wool direct from the growers?

A. Yes.

Q. How do you buy graded wool?

A. Well, where the wools were graded by sheep men, under their directions the sheep were driven into the corral, and after they were shorn the wool would be put on tables that were at the stations for that purpose, and the staple wool would be thrown into a bin by itself, the short clothing wool would be thrown into a bin by itself, and also all the classifications would be handled in the same way; the short fine wool, the long fine wool, the long half-blood wool, the staple half-blood wool, and the clothing half-blood wool, each grade, respectively, baled and handled; each bale being handled distinctly by itself, and afterwards baled dby itself, so that the grower would have an intelligent description of his wool. Then this was—after the process was finished—the grower was handed his grading sheet, and if his wool was offered for sale he intelligently knew what he was doing, and the purchaser would also know what he was intelligently doing.

85 Q. How would the short-staple wool be described?

A. As short clothing wool.

Q. And the longer staple, how would that be described?

A. As staple wool. In the Territories, as an illustration, the term staple was used more than combing.

Q. Does staple mean the same as combing?

A. It means the same. It was more commonly used that way.

Q. Have you examined the exhibits here, Nos. 1 to 12?

A. I have.

Q. And within the experience you have just narrated, in what class would that wool come?

Mr. HOPPIN. I object to that. He has not been qualified to testify to that. Also this is rebuttal testimony. We have not introduced any commercial evidence as to these samples; these exhibits. This witness is branching out on something entirely different than what was brought out on the direct examination.

General Appraiser BROWN. I think under the court's ruling it would clearly be admissible as bearing on the same subject. Objection overruled.

Mr. HOPPIN. If your honor please, this is not direct examination. This is rebuttal of the direct evidence of the Government.

Mr. SHARRETTS. Does my friend wish to shut me off on the rebuttal from anything that he dwelt on on the direct?

Mr. HOPPIN. We didn't deal in that on the direct examination. This is rebuttal testimony.

General Appraiser BROWN. I can't see the distinction under the court's ruling.

Mr. HOPPIN. If your honor please——

General Appraiser BROWN. Both would be admissible there.

Mr. HOPPIN. The other side has rested.

General Appraiser BROWN. As a part of the same subject matter and dealing with the same thing, and therefore this would be admissible as rebuttal testimony.

Mr. HOPPIN. If your honor please, the Government put in certain testimony, which was confined to the experience of these men as wool producers. Now my friend is backing out on something entirely different and something that the Government did not produce on the direct examination. This is not direct evidence. This is rebuttal testimony on something that the Government brought out on the direct.

General Appraiser BROWN. The court received all the testimony we had before, as I recall, as testimony not commercial; in fact, if I recall, they distinctly did not call it that, but as bearing on
86 common meaning from business men and wool manufacturers and all the various types of witnesses who testified. They treated it as substantially the same thing. If as a result of that ruling the difference between common and commercial meaning is lost, for the purpose of the case, that ruling would be binding here, and it would be proper rebuttal that the definition is confined to common meaning, and this verging on what we thought was commercial meaning until we all thought it was the same thing.

Mr. HOPPIN. We produced certain evidence on our direct. This is rebuttal testimony of our direct examination. What the court held has nothing to do with this case at all. It is what we produced, the character of evidence which we produced on our direct examination, and we produced nothing of this kind at all on our direct. This is only rebuttal testimony, and must be confined to evidence to controvert the direct evidence which the Government produced before your honors. That has nothing to do with the ruling of the court.

General Appraiser BROWN. That is the way we see and we so rule.

Mr. HOPPIN. I would like to have an exception. I understand your honor said it meant commercial meaning.

General Appraiser BROWN. The court ruled that evidence of this exact character was admissible not as commercial testimony but as evidence from which they could derive the common meaning, to which they were limited under the terms of the statute.

Mr. HOPPIN. We produced certain witnesses who testified as to certain facts, which evidence was brought in to rebut the direct testimony of the Government in this case, which was confined very strictly to the wool producers, and what they understood that term to mean. Now my friend is leading this witness into the commercial side of the case, and what the court held in the main case has nothing to do with it.

General Appraiser BROWN. Except we are bound by the Court of Appeals ruling in the previous case.

Mr. HOPPIN. They didn't make any ruling on rebuttal testimony.

General Appraiser BROWN. We interpreted it to go that far. The principle of it is the same. If the court treated the two classes the same as that we thought was different, then that would be proper rebuttal evidence.

Mr. HOPPIN. It seems to me——

General Appraiser BROWN. I have heard you fully and I have ruled.

Mr. HOPPIN. Exception.

Q. Exhibits 1 and 12?

A. Combing wool.

87 Q. Would that be known as clothing wool?

Mr. HOPPIN. I object, your honor, as leading the witness, and I think it is objectionable in form.

General Appraiser BROWN. Objection overruled.

Mr. HOPPIN. Exception.

A. No.

Q. Have you taken wool on consignment direct from the growers?

A. Yes.

Q. Will you describe how that transaction was negotiated?

A. In soliciting wools on consignment it is customary to take the wool just as it is from the grower—his entire clip, and make an advance, make them an advance of possibly two-thirds of the market price—the estimated price—and take the wools, ship them home, put it into warehouses, grade them up, putting each respective grade in its proper place, and offering the grades for sale.

General Appraiser BROWN. All he asked you was in dealing with the farmer what did you do.

A. I am coming to that point. I am giving the methods, and then I am coming to that. And after making disposition of each grade, the short clothing, fine, staple, combing—everything that was in the original bags and packages—we would render an account of sales.

Q. To whom?

A. To the growers, giving them a thorough description of their wools, at the prices that they were sold, the grades that the wools contained, and rendering them the final results.

Q. Now, within your understanding, based upon that experience, what kind of wools would Exhibits 1 to 12 be here?

A. Combing.

Mr. HOPPIN. I object, your honor, and move that the answer be stricken out.

General Appraiser BROWN. Objection and motion denied.

Mr. HOPPIN. Exception.

Q. Would it be described as clothing wool in that method of transaction?

A. No.

Q. What kind of wool would be described as clothing wool in transactions of that kind?

A. The short wool.

Q. Now, have you purchased wool from the various woolgrowers' associations located in the different States?

A. At times.

Q. How would you buy wool from the woolgrowers' associations?

A. Wool from the associations—in purchasing wool from the associations, when the wools were retained in their original state, if held by the associations in their original state, we would perform just practically the same methods as we would with the individual grower.

88 Q. What is the customary thing for the associations to do to sell in the original bags or to grade them and sell them?

A. Why, that varies according to the conditions of the market.

Q. Where they graded it, how did they sell it?

A. When they were graded, they asked a price for each respective grade, and they would offer their combing wools at a price and fine short clothing wools at a price.

Q. Now, within the experience you personally had in connection with these latter transactions, how would wools such as Exhibits 1 to 12 be described?

A. As combing wool.

Mr. HOPPIN. I object to that, your honor.

General Appraiser BROWN. The same ruling.

Mr. HOPPIN. Exception.

Q. Would it be described in transactions of that kind as clothing wool?

A. No.

Mr. HOPPIN. I object to this testimony.

General Appraiser BROWN. The same ruling.

Mr. HOPPIN. Exception.

Q. Now, Mr. Solomon, when the Government took over control of the wool, back in 1918, I think it was, were you licensed to operate under that Government regulation?

A. Yes.

Q. In what capacity?

A. As soliciting wools from the growers and paying them a certain amount of money—say 80 per cent, 80 or 90 per cent—of the specified price set forth by the Government.

Q. Was the wool graded?

A. Yes.

Q. Who graded it?

A. We graded it—the merchants and dealers who were licensed.

Q. And was it graded in accordance with any Government regulation?

A. Yes.

Q. Will you state briefly just how it was graded?

Mr. HOPPIN. I object, your honor, on the ground that it is incompetent, irrelevant, and immaterial. There is no question here as to how the Government graded it. Is this rebuttal testimony?

Mr. SHERRATTS. Yes; it certainly is.

Mr. HOPPIN. I object on the ground that it is incompetent, irrelevant, and immaterial, and it is not proper rebuttal testimony. There is no testimony of any kind as to how the Government graded it during the war.

General Appraiser BROWN. If it was material, wouldn't the Government regulations be the best evidence? Because of that, I am inclined to think it is material. I will sustain the objection. We will suspend the ruling for a moment.

89 Mr. SHARRETTS. In the testimony of one Government witness it was to the effect that under the Government control the Government settled with the dealers, but did not settle direct with the growers, and while they settled with the dealers on the basis of the grading, that the payment was made to the growers on the flat basis, and all I wanted to do was to get some testimony on that point which would seem to me to be rebuttal.

General Appraiser BROWN. If you get in the testimony which he described, then this would have to be permitted as proper rebuttal.

Mr. SHARRETTS. It was brought out on cross-examination. I don't say that the Government brought it out.

General Appraiser BROWN. We will sustain the objection.

Mr. SHARRETTS. I offer to prove should this witness be allowed to answer——

Mr. HOPPIN. I would like to point to your honors that if this question was brought out it was brought out on cross-examination. If my friends are going to be able to rebut everything that was brought out on cross-examination, that is not proper.

General Appraiser BROWN. We have excluded it. You are entitled to put your exception on the record. Make your offer of proof. If you want to make your exception good, make your offer of proof.

Mr. SHARRETTS. I offer to prove by this witness that in making settlements to the growers they were made just as he received the money from the Government, that the amount paid for clothing wool was paid to the grower and the amount paid for combing wool was paid to the grower, and that the settlement was made on that basis.

General Appraiser BROWN. That gives you your exception on the record.

Mr. SHARRETTS. I wanted to straighten a statement which I made myself, which was not correct.

General Appraiser BROWN. Do you mean that you want to correct something on the record?

Mr. SHARRETTS. No; I had made a statement to the board with respect to what was done on the former hearing.

General Appraiser BROWN. It does not matter. It won't affect the ruling.

Mr. SHARRETTS. All I wish to do is to get my statement correct on the record.

General Appraiser BROWN. The counsel now wishes to correct a statement of his.

90 Mr. SHARRETTS. I have stated that this testimony was brought on cross-examination. I find upon looking at the record, at page 27 of the testimony, that it was brought out in reply to a question by Mr. Lawrence [reading from record]:

"Q. Do you know how these settlements were made?—A. I do know. The Government did settle on the basis of the fineness of fiber and length of staple at various prices to the dealers who secured these wools, but the growers received flat prices generally speaking."

General Appraiser BROWN. We will adhere to the ruling, anyway.

Q. Now, Mr. Solomon, have you had experience in selling wools in the wool markets of the country?

A. Yes.

Q. For how long?

Mr. HOPPIN. I object, your Honor. The testimony is not proper rebuttal. There is no testimony brought by the Government on the direct examination in regard to the buying and selling.

General Appraiser BROWN. On that we have already ruled. That is the same ruling.

Mr. HOPPIN. I object to all of this testimony as not being proper rebuttal testimony.

General Appraiser BROWN. You will get an exception to this whole line on that ground.

A. For my entire experience in the business, over 30 years.

Q. Are you familiar with the terms used to describe wool in the markets?

A. Yes.

Q. Are you familiar with the term "clothing wool" as it is used?

A. Yes.

Q. Combing wool?

A. Yes.

Q. To which class do Exhibits 1 to 12 belong?

A. The combing wool.

Q. Have you purchased from the growers, by the way, wool comparable to Exhibits 1 to 12 as to staple and quality?

A. Yes.

Mr. HOPPIN. I understand I have an exception to all of this testimony on commercial grounds, as well as the fact it is not proper rebuttal?

General Appraiser BROWN. Yes.

Mr. HOPPIN. My friend is leading this witness into a lot of commercial testimony which was not produced at all by the Government on the direct examination.

General Appraiser BROWN. You will have the full benefit of an exception to his whole line. As I understand the court's ruling, I held,

and I think the majority of the board held, that that testimony was either inadmissable or could not be used in view of the phraseology of the particular clause, but the court held otherwise and admitted it all, and treated it just exactly as of the same class as the
91 kind of testimony that you introduced to-day, consequently that character of testimony now introduced in rebuttal of what you introduced to-day would be, under the court's ruling, as we understand it, proper rebuttal. That is why it is admitted, and you will get an exception to the whole record so far as your objection will apply.

Q. Now, Mr. Solomon, as the term "clothing wool" is used as you have stated in the markets of the country, what is the understanding of the term?

A. Short staple.

Q. And what is the understanding of the term "combing wool"?

A. Long wool.

Q. Now, throughout your entire experience, whether as a grower, as a purchaser from the growers, or as a seller in the markets, has the term "clothing wool" been used in any different sense, within your experience?

A. No.

Mr. HOPPIN. I object, your Honors, on the ground that it is incompetent and irrelevant.

General Appraiser BROWN. On the same ground, on the same general ground. Objection overruled.

Mr. HOPPIN. "In any other sense." I don't know what he means by "any other sense." I object on the ground that the question is not clear and it is not responsive.

Mr. SHARRETTS. If that answer is not responsive, I never heard one that was.

Mr. HOPPIN. On the ground that it is indefinite—"In any other sense"—it is indefinite. I object and ask that the answer be stricken out.

General Appraiser BROWN. Objection overruled.

Mr. HOPPIN. Exception.

Q. Have you in your experience ever known a grower to describe combing wool that is long staple wool as clothing wool?

Mr. HOPPIN. I objected, your honors, on the ground that it is leading, incompetent, and irrelevant.

Mr. SHARRETTS. I think it has a direct bearing on it.

Mr. HOPPIN. If my friend is answering the question for the witness, all right. If he is permitted to lead the witness——

General Appraiser BROWN. Are you ready for us to rule?

Mr. HOPPIN. Yes, your Honor.

General Appraiser BROWN. Objection overruled.

Mr. HOPPIN. Exception.

(The question objected to was read by the reporter.)

A. No, sir.

Mr. SHARRETT. That is all.

92 By Mr. HOPPIN:

Q. Mr. Solomon, what is your present residence?

A. 151 West Eighty-sixth Street, New York.

Q. And how long have you resided there?

A. In that particular place?

Q. Yes.

A. Since the 1st of October, in New York.

Q. In New York?

A. Since the 1st of October—in New York.

Q. In New York?

A. Oh, many years.

Q. What length of time?

A. Quite some years.

Q. Could you say approximately?

A. In New York?

Q. Yes.

A. Off and on for over 30 years.

Q. Is this your chief place of business?

A. It is to-day.

Q. What is the name of the business with which you are connected; is it in your own name?

A. No; at the present time?

Q. Yes.

A. I am connected with John A. McMurtrie & Co. at the present time.

Q. How long have you been connected with them?

A. For a year and a half.

Q. And before that?

A. With Eisemann Bros., of Boston.

Q. How long were you connected with them?

A. For seven years.

Q. What was the nature of their business?

A. Buying and selling wool.

Q. Wool brokers?

A. Wool merchants.

Q. And before that, with whom were you connected?

A. Henry Marx & Co., of St. Louis, a member of the firm for 15 years.

Q. What was the nature of their business?

A. Buying and selling wool.

Q. For how long were you a member of the firm there?

A. Fifteen years.

Q. And before that?

A. With Henry Cohn & Co., of Salt Lake City.

Q. What was the nature of their business?

A. Buying and selling wool and sheep raising. I was a member of the firm.

Q. What did you have to do in connection with that firm?

A. All branches of the business.

Q. And do you remember the approximate dates that you were connected with that firm?

A. With what firm?

Q. With Cohn & Co., the last one which you mentioned.

A. From 1885 to 1900; 15 years.

Q. And what did you do during that period; what were your duties as a member of the firm?

A. My duties were general; buying and selling wool and sheep raising.

93 Q. Did you have any farms connected with the firm?

A. We had some very large ranches connected with that firm; we were also raising thoroughbred sheep for that firm.

Q. Before that period what did you do?

A. Before that period I went to school. I don't want to get too old, you know. You will have my age.

Q. The reason I ask you that question——

A. It is very seldom I give such information as that, your Honor. You will have me down as an old man.

Q. Did any of these other firms which you have mentioned here have any sheep ranches?

A. No.

Q. Are you a member of any sheep growers' association?

A. No.

Q. Are any members with which you have been connected members of any of those associations?

A. No.

Q. When you say you bought direct from the woolgrowers, Mr. Solomon, you purchased, did you not, as a merchant dealing in wool?

A. Yes.

Q. And did you buy that in small lots or did you buy the majority of your wool from the association?

A. I bought most of it direct from the grower in large lots and in small lots.

Q. Did you know—you know, do you not, that you bought the wool according to grade, did you not——

Mr. HOPPIN. I will withdraw the question.

Mr. SHARRETTS. I think the question is very indefinite.

General Appraiser BROWN. The objection is overruled. He will understand it.

Mr. HOPPIN. I withdraw the question.

Q. When you bought this wool from the woolgrowers, did you have it graded by your grader?

A. No; not generally.

Q. Did you personally buy from your personal inspection of the wools?

A. Yes.

Q. You knew from your personal experience what those various grades were, didn't you?

A. Yes.

Q. And those grades were grades used by mills in the purchase of that wool from you, as a broker, were they?

A. Yes.

Q. So those grades were really mill terms, were they not?

A. Not generally speaking. Do you mean as when we sold them?

Q. Yes.

A. When we sold them, certainly, they were mill terms.

Q. When you bought these individual lots from the woolgrowers, from 2 to 50 bags, did you say on your direct examination?

A. I didn't say that.

94 Q. Will you tell me what the amounts, as a rule, were which you bought from the woolgrowers?

A. Generally speaking, from 50 to 500, perhaps.

Q. From the individual growers?

A. From the individual growers.

Q. Was that wool packed in bags, as shorn from the sheep?

A. Packed in bags as shorn from the sheep.

General Appraiser BROWN. What term did the grower use in dealing with it? What would you call it and what would he call it in the conversations?

The WITNESS. As wool was he always tried to show us as much staple or combing as possible. He knew the difference. Judge, your honor, these men are very intelligent fellows.

Mr. HOPPIN. I can't hear this. Is this for the purpose of the record? As I understand it——

A. (Continuing). It has been the ambition of these growers to buy the best rams they could get. I have sold them lots of rams and they always picked them for staple wool, because we have always talked with them the staple wool would bring the highest price and they became ambitious to know what was best for them to raise. In that way they kept intelligently on the question. I can go into this subject more if you wish.

Mr. HOPPIN. No; I would like, if your honor please, I would like to continue.

General Appraiser BROWN. That will do for an answer.

Q. After you purchased these bags from these growers you graded the wool according to length of staple, did you?

A. Yes.

Q. And then you paid the growers according to the grades as ascertained by you or your graders?

A. You mean where? Where do you mean? Do you mean buying it in the original state, or in the graded state?

Q. Either direct from the grower in these bags as shorn from the sheep.

A. We paid them a round price for their wool. We paid them a round price, but estimated the asking price of the grower. We

always had that in mind, because they always asked enough. I have never known of any angels among the woolgrowers, for I have been one myself, and I guess I was in the same position; but they always had a price in their mind, and we tried to come as near to it as possible, and the only way we could come to it was to know what they had to sell.

Q. How much actual experience, Mr. Solomon, did you have as a grower?

A. I had about 15 years' experience in growing wool and raising sheep, not alone in the raising of stock sheep, but also in
95 the raising of rams for growers. We imported, I think it was in 1890, we imported 2,000 of the finest ewes that were raised in the State of California. At that time we were practically the first people to establish the fine sheep husbandry.

Q. Have you had any interest in any ranches or herding sheep since 1900?

A. We practically were in that business for 15 years up to 1900; yes, sir.

Q. When you say "we," you mean your firm?

A. The firm of which I was a member.

Q. Mr. Solomon, this wool in Exhibits 1 to 12 is suitable for the manufacture of clothing, is it not?

A. Oh, yes.

By Mr. SHARRETTS:

Q. The Government counsel has just asked you if this wool, I think, was used in the manufacture of clothing, and you stated that it was?

A. That is right.

Q. In your entire experience, have you ever known of a grower, buyer, or seller, or manufacturer, to use the term "clothing wool" as having reference to wool being used in the manufacture of clothing?

Mr. HOPPIN. I object to that.

General Appraiser BROWN. Objection overruled.

Mr. HOPPIN. Also on the further ground that that is asking for a conclusion, and that therefore it can not be asked the witness. That is a question for your honors to determine.

General Appraiser BROWN. Objection overruled.

A. No.

Mr. SHARRETTS. That is all.

By Mr. HOPPIN:

Q. I want to ask you if you filed any protests in this matter, either you or any party that you are interested in, any member of your firm?

A. No.

Q. You are not interested in any way in this matter?

A. None whatever.

Q. You came here as a voluntary witness?

A. Under subpoena.

Q. I understand you were in the Government employ during the war; you were under the Government control?

A. Well, I did my part.

(General Appraiser Brown at this point left the bench.)

General Appraiser SULLIVAN. You were a dollar a year man.

The WITNESS. Yes; let's forget it, Judge.

96 Mr. SHARRETTS. I think that is all. I think if there is anything further it will be purely cumulative.

General Appraiser SULLIVAN. You submit?

Mr. SHARRETTS. We submit.

Mr. HOPPIN. There was some question before as to the matter of briefs.

General Appraiser SULLIVAN. The case is submitted?

Mr. HOPPIN. Yes.

General Appraiser SULLIVAN. All briefs will be filed by the 15th of August, as agreed to by both sides.

Mr. HOPPIN. In regard to the brief on the introduction of the Ways and Means Committee report, which was held up here, the Government has prepared its brief, and will file it at any time on that question. May I ask rather than keep the case open, that whichever way the board may decide that either counsel may have the benefit of an exception?

General Appraiser SULLIVAN. Are you going to file a brief on the admission of the report of the Committee on Ways and Means, Mr. Sharretts?

Mr. SHARRETTS. Yes, sir.

General Appraiser SULLIVAN. The Government has just filed its brief with reference to the introduction of the report of the Ways and Means Committee, ruling on which was held in abeyance at the last hearing; I will give the importer 10 days from this date to reply thereto and will say that upon the ruling by the board on that matter an exception will be given to the losing party.

Mr. SHARRETTS. As I understand that, it was that the Government brief would now be filed, and we are to reply to it?

General Appraiser SULLIVAN. I don't care whether you call it a reply or not.

Mr. LAWRENCE. I thought we were both to file our briefs to-day.

Mr. SHARRETTS. I didn't understand it at that time. I thought they were to file a brief and we were to reply to it. He wants to withhold the Government brief until we file ours.

Mr. LAWRENCE. I will file it with the board, as Judge Sullivan suggests.

Mr. SHARRETTS. Do you want to give us a copy to reply to?

Mr. LAWRENCE. I will be delighted.

Mr. SHARRETTS. I thank you.

(The case was submitted by both sides.)

The importer was granted 10 days in which to reply to the Government's brief on the admissibility of the Committee on Ways

97 and Means report, previously referred to; and both sides were granted time for briefs, to be filed by the 15th of August, 1924.

The board, after due consideration of the offer in evidence of the report of the Committee on Ways and Means and reading the briefs of counsel, sustains the objection thereto, allowing an exception to the Government.

Dated June 30, 1924.

Exhibit No. 1—Protest 949137, etc.

Board of United States General Appraisers, June 28, 1924

United States Court of Customs Appeals

No. 2245

STONE & DOWNER CO. ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

Petition for review

To the Honorable the United States Court of Customs Appeals:

Your petitioners, Stone & Downer Co. et al., being dissatisfied with the decision made on February 20, 1923, by the Board of United States General Appraisers as to the constructions of the law and facts respecting the proper classification of certain wool, wool yarn, and wool cloth imported at the port of Boston by the said petitioners and covered by the following protests and entries:

Protest	Entry	Vessel	Date of entry
		STONE & DOWNER CO.	
942570	759	Surrey	8/10/21
941808	9377	Oxonian	6/7/21
942569	768	Missouri	8/12/21
952179	1579	Canadian Pioneer	3/30/22
		JOHN R. CONKEY	
951310	1207	Canadian Traveler	1/30/22
		J. A. KARNHEIM	
953320	1731	Boswell	4/12/22
953320	1660	Crofton Hall	4/7/22
953320	1900	Songdol	4/20/22
		LOWE, DONALD & CO.	
950402	7916	Winifredian	3/4/22

98 respectfully makes application to this court for a review of the questions of law and fact involved in such decision and sets forth the following statement of errors of law and fact complained of:

ERRORS OF LAW AND FACT

The Board of United States General Appraisers erred:

1. In overruling the protests.
2. In not sustaining the protests.

3. In not holding that the wool covered by the following protests of Stone & Downer Co. (942570/11264, 942569/11260, 952179/11661), John R. Conkey (951310/11598), and J. A. Karnheim (953320/11742), was free of duty under paragraph 650 of the tariff act of 1913.

4. In sustaining the action of the collector in assessing the said wool for duty under paragraph 18 of Title I of the emergency tariff act of May 27, 1921.

5. In holding that the said wool is wool commonly known as clothing wool.

6. In not holding that the said wool is wool other than wool commonly known as clothing wool.

7. In excluding evidence offered by the protestants for the purpose of showing the use of the term "clothing wool" in official pamphlets and other documents of public distribution.

8. In sustaining the action of the collector in assessing the worsted yarn covered by protest 941808/11227 of Stone & Downer Co. at the additional rate of 45 cents per pound under paragraph 19 of Title I of the emergency tariff act of May 27, 1921.

9. In not holding that said worsted yarn was dutiable only under the tariff act of 1913.

10. In not holding that said yarn was made from wool other than the kind provided for in said paragraph 18 of the said emergency act.

11. In sustaining the action of the collector in assessing the wool cloth covered by protest 950402/11553 of Lowe, Donald & Co. at the additional rate of 45 cents per pound under paragraph 19 of Title I of the emergency tariff act of May 27, 1921.

12. In not holding that the said wool cloth was subject to duty only under the tariff act of 1913.

13. In not holding that said cloth was made from wool other than the kind provided for in said paragraph 18 of the said emergency act.

14. In disregarding testimony duly admitted at the trial.

15. In disregarding the definitions of the standard authorities, such as the dictionaries and encyclopedias, in determining what is commonly known as "clothing wool."

99 16. In holding in its opinion (opinion of G. A. Brown) that testimony duly admitted at the trial was inadmissible.

17. In deciding contrary to the evidence.

18. In making findings of fact unsupported by evidence.

19. In basing its conclusion as to the meaning of paragraphs 18 and 19 of Title I of said emergency tariff act upon a supposed policy of Congress inconsistent with the wording of the statute.

20. In holding that questions of doubt as to which statute applies in the present case must be decided favorable to the Government or taxing power. (See opinion of G. A. Sullivan.)

21. In making findings of law contrary to the weight of authority.

Accordingly, your petitioners respectfully pray that this court order the said Board of United States General Appraisers to return to this court the record and evidence taken by the said board, together with a certified statement of the facts involved in the case and their decision thereon, and thereupon to review said decision and to hear and determine the questions of law and fact involved in the same.

Dated, March 14, 1923.

STONE & DOWNER CO.,
JOHN R. CONKEY,
J. A. KARNHEIM,
LOWE, DONALD & CO.,
By SHARRETTS, COE & HILLIS,
Attorneys for Appellants.

25 WEST FORTY-THIRD STREET, *New York City.*

[Endorsed:] United States Court of Customs Appeals. Filed Mar. 15, 1923. Arthur B. Shelton, Clerk.

Return of board to order of court

[Title omitted.]

The petitioner above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said court having ordered the board to transmit to said court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

100 Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

A copy of—

1. The protests enumerated in the petition with the reports of the collector of customs and the United States appraiser thereon.

2. The testimony taken before the board.

3. The board's decision in question, G. A. 8613 (T. D. 39473), and judgment order.

Exhibits 1 to 15, 10–A, Illustrative Exhibits C to J, Exhibits A, B, D, E, and F, for identification, and the entry papers will be forwarded later.

Witness the Hon. Jerry B. Sullivan, president of the board, this 20th day of April, A. D. 1923.

[SEAL.]

D. P. DUTCHER,
Chief Clerk.
G. V. O.

Wool—Emergency act.

Protest 942507/11264

BOSTON, *October 5, 1921.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty at 30 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed.

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provision of paragraphs 18 and 19 of Title I of the emergency tariff act.

101 4. Alternatively with the above claims, we claim that if any of the merchandise covered by the entries named below is subject to duty under the emergency tariff act, it is subject to only 15 cents per pound, provided for in paragraph 18 of said Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at ten per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly and by similitude and component material or otherwise as provided in par. 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law, hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data below given are given under duress, without prejudice, to aid you and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the

Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

Vessel	Entered	Bond No.	Liquidated	Marks and Nos.
Surrey	8/10/21	759	9/6/21	Various as per entries and invoices.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in reference to this protest to Thaddeus S. Sharretts, 25 West Forty-third Street, New York City.

[Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on wool. Received Oct. 6, 1921. Customhouse, Boston, Mass.
102 Naval office, Boston, Nov. 5, 1921. Customhouse, Boston. Paid Nov. 5, 1921. W. M. K., cashier's office. Office of U. S. Appraiser, Boston, Mass. Received Nov. 8, 1921. Bond 759—Invoices 1/2. 942570. 11264.

Report of the collector

11264

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Boston, Mass., November 18, 1921.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, N. Y.

SIRS: I transmit herewith the protest, No. 11264, with accompanying invoices and entry (1/2, E 759) of Stone & Downer Co. against the assessment of duty at the rate of 30 cents per pound on certain wool, imported by them per "Surrey," and entered for warehouse on August 10, 1921.

The protestants claim that the ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We further claim that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the act of 1913 and is therefore excluded from the general provision of paragraph 18 or 19 of the said Title I of the emergency act.

4. Alternatively with the above claims we claim that if any of the merchandise covered by the entries named below is subject to duty under the said emergency tariff act, it is subject to only 15 cents per pound provided for in paragraph 18 of said Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said tariff act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

I inclose herewith the special report of the appraiser, dated the 17th instant, who states that "The merchandise subject to protest consists of certain wool entered at 15 cents per pound but returned at 30 cents per pound under paragraph 18 of the emergency tariff act, as in the opinion of this office the wool has been increased
103 in value by rejection of part of the original fleece, thereby carrying the double duty provided in said paragraph."

The requirements of paragraph N, section III of the act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

The appraiser reports samples retained.

A return of the invoices and entry is requested.

Respectfully,

W. W. LUFKIN, *Collector.*

Answer to protest

Wool—Emergency tariff.
J. W. K./L. P.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., November 17, 1921.

Protest No. 11264.
Importer, Stone & Downer Co.
Invoice Nos. Christchurch 161 and 168.
Entry No. Bond 759.
Date, Aug. 10/21.

The merchandise subject of protest consists of certain wool entered at 15 cents per pound but returned at 30 cents per pound under paragraph 18 of the emergency tariff act, as in the opinion of this office the wool has been increased in value by rejection of part of the original fleece, thereby carrying the double duty provided in said paragraph.

Samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

Protest 941808/11227

BOSTON, *September 17, 1921.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty at 18 per cent ad valorem and 45 cents per pound additional, or other rate or rates, on certain woolen yarns covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and of the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is dutiable at 18 per cent ad valorem only under
104 paragraph 287 of the act of October 3, 1913. We protest against the assessment of 45 cents per pound additional under the emergency tariff act on the ground that the merchandise is not in any way described in paragraphs 18 and 19 of said emergency tariff act. We claim that you should have assessed the merchandise at 18 per cent ad valorem only under said paragraph 287 of the tariff act of October 3, 1913.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in par. 386, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief competent in value, and by all statutory, judicial or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under section 3, or otherwise, on goods decided under this protest to be free of duty or dutiable at special rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein, and to each and all future importations of the same or similar merchandise or articles and to the payments thereon. The entry numbers and other marks, numbers and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles and you and the Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

Vessel	Entered	Entry	Liquidated	Marks and Nos.
Oxonian.....	6/7/21	9377	8/18/21	Various as per entries and invoices.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in reference to this protest to Thaddeus S. Sharretts, 25 West Forty-third Street, New York.

105 [Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on woolen yarns. Received Sept. 17, 1921. Customhouse, Boston, Mass. Customhouse, Boston. Paid Oct. 17, 1921. I. E. P., cashier's office. Naval office, Boston, Oct. 17, 1921. Office of U. S. Appraiser, Boston, Mass. Received Oct. 18, 1921. Entry No. 9377. No. 11227. 94108.

Report of the collector

11227

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Boston, Mass., October 21, 1921.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, N. Y.

SIRS: I transmit herewith the protest, No. 11227, with accompanying invoice and entry (1, E 9377) of Stone & Downer Co. against the assessment of duty at the rate of 18 per cent ad valorem and 45 cents per pound on certain woolen yarns, so-called, imported by them per "Oxonian," and entered for consumption on June 7, 1921.

The protestants claim that "The ground of objection under the tariff act of October 3, 1913, and the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed but is dutiable at 18 per cent ad valorem only under paragraph 287 of the act of October 3, 1913. We protest against the assessment of 45 cents per pound additional under the emergency tariff act on the ground that the merchandise is not in any way described in paragraphs 18 and 19 of said emergency tariff act. We claim that you should have assessed the merchandise at 18 per cent ad valorem only under said paragraph 287 of the tariff act of October 3, 1913."

"It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem."

I inclose herewith the special report of the appraiser, dated the 19th inst., who states that "The merchandise subject of protest consists of high-grade woolen yarn, returned for duty at the rate of 18

per cent ad valorem under paragraph 287 of the tariff act of 1913, plus 45 cents per pound under the emergency tariff, paragraph 19. Protest is made that the duty under the emergency tariff does not apply. This appears to be a question of law. The manufacturers do not designate wool as clothing wool, therefore the claim is made that this yarn is not known as being composed of clothing wool. (Cases are now before the Board of General Appraisers at New York.)"

106 The requirements of paragraph N, section III of the act of October 3, 1913, have been complied with by the protestants, so far as the time limit for filing protest and payment of fee is concerned.

The appraiser reports no samples retained.

A return of the invoice and entry is requested.

Respectfully,

E. PERRY,
Special Deputy Collector.

Answer to protest

Woolen yarns.
E. B. O./O. C. B.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., October 19, 1921.

Protest No. 11227.
Importer, Stone & Downer Co.
Invoice No. Nottingham 1294.
Entry No. 9377.
Date, June 6, 1921.

The merchandise subject of protest consists of high-grade woolen yarn, returned for duty at the rate of 18 per cent ad valorem under paragraph 287 of the tariff act of 1913, plus 45 cents per pound under the emergency tariff, paragraph 19. Protest is made that the duty under the emergency tariff does not apply. This appears to be a question of law. The manufacturers do not designate wool as clothing wool, therefore the claim is made that this yarn is not known as being composed of clothing wool. (Cases are now before the Board of General Appraisers at New York.)

Respectfully,

S. W. GEORGE, *Appraiser.*

No samples retained.

Protest 942569/11260

BOSTON, *October 5, 1921.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties,

and your decision assessing duty at 30 cents per pound, or other rate or rates, on certain wool covered by entries below named. The
107 ground of objection under the tariff act of October 3, 1913 and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed.

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provision of paragraphs 18 and 19 of Title I of the emergency tariff act.

4. Alternatively with the above claims, we claim that if any of the merchandise covered by the entries named below is subject to duty under the emergency tariff act, it is subject to only 15 cents per pound provided for in paragraph 18 of said Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force or chief use, and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of addition duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles and you and the Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

108 Vessel	Entered	Bond No.	Liquidated	Marks and Nos.
Missouri.....	8/12/21	768	9/6/21	Various as per entries and invoices.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in reference to this protest to Thaddeus S. Sharretts, 25 West Forty-third Street, New York City.

[Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on wool. Received Oct. 6, 1921. Customhouse, Boston, Mass. Customhouse, Boston. Paid Nov. 5, 1921. W. M. K., cashier's office. Naval office, Boston, Nov. 5, 1921. Office of U. S. Appraiser, Boston, Mass. Received Nov. 8, 1921. Bond 768—Invoice 1. 942569. 11260.

Report of the collector

11260

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE.
Boston, Mass., November 18, 1921.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, N. Y.

SIRS: I transmit herewith the protest, No. 11260, with accompanying invoice and entry (1, E 768) of Stone & Downer Co. against the assessment of duty at the rate of 30 cents per pound on certain wool, imported by them per "Missouri," and entered for warehouse on August 12, 1921.

The protestants claim that "The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913,
109 at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore

excluded from the general provision of paragraphs 18 and 19 of said Title I of the emergency act.

4. Alternatively with the above claims we claim that if any of the merchandise covered by the entries named below is subject to duty under the said emergency tariff act, it is subject to only 15 cents per pound provided for in paragraph 18 of Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

I inclose herewith the special report of the appraiser, dated the 17th instant, who states that "The merchandise subject to protest consists of certain wool entered at 15 cents per pound, but returned at 30 cents per pound under paragraph 18 of the emergency tariff act, as in the opinion of this office the wool has been increased in value by rejection of part of the original fleece, thereby carrying double the duty as provided in said paragraph."

The requirements of paragraph N, Section III, of the act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

The appraiser reports samples retained.

A return of the invoice and entry is requested.

Respectfully, W. W. LUFKIN, *Collector.*

Answer to protest

Wool—Emergency tariff.
J. W. K./L. P.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., November 17, 1921.

Protest No. 11260.
Importer, Stone & Downer Co.
Invoice No. Pro forma.
Entry No. Bond 768.
Date, Aug. 12/21.

The merchandise subject of protest consist of certain wool entered at 15 cents per pound, but returned at 30 cents per pound
110 under paragraph 18 of the emergency tariff act, as in the opinion of this office the wool has been increased in value by rejection of part of the original fleece, thereby carrying double the duty as provided is said paragraph.

Samples retained.

Respectfully, S. W. GEORGE, *Appraiser.*

Inclosure.

Protest 952179/11661

BOSTON, *May 25, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties,

and your decision assessing duty at 30 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provision of paragraphs 18 and 19 of Title I of the emergency tariff act.

4. Alternatively with the above claims, we claim that if any of the merchandise covered by the entries named below is subject to duty under the emergency tariff act, it is subject to only 15 cents per pound provided for in paragraph 18 of said Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and
111 chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion to obtain and retain possession of said merchandise or articles and you and the Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Bond No.	Liquidated	Marks and Nos.
Canadian Pioneer..	3/30/22	1579	4/29/22	Various as per entries and invoices.

Respectfully,

STONE & DOWNER CO.,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in reference to this protest to Thaddeus S. Sharretts, New York City.

[Indorsed:] Boston, Mass. Stone & Downer Co. Protest. Duty on wool. Received May 25, 1922. Customhouse, Boston, Mass. Office of U. S. Appraiser, Boston, Mass. Received June 27, 1922. Customhouse, Boston. Paid June 26, 1922. W. M. K., cashier's office. Naval office, Boston, June 26, 1922. W H 1579—Invoice 1. 952179. 11661.

Report of the collector

11661

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT No. 4,
Port of Boston, July 3, 1922.

TO THE BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, N. Y.

I submit herewith the protest described below with the accompanying invoice and entry, against my assessment of duty at the rate of 30 cents per pound on certain wool claimed to be—The claim of the importers is set forth in the inclosed protest—returned by the
112 appraiser as entered and assessed with duty under paragraph 18, act of May 27, 1921, in accordance with the advisory classification of the appraiser.

The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

I inclose herewith the special report of the appraiser, dated the 28th ult., who states that "The merchandise subject of protest consists of Australian greasy wool, entered and returned for duty at the rate of 30 cents per pound under paragraph 18 of the emergency tariff, being, in the opinion of this office, wool of a class therein provided for, and, inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

The appraiser reports no samples retained.

Respectfully,

W. W. LUFKIN, *Collector of Customs.*

No.	Name of importer	Vessel	Date of entry
11661	Stone & Downer Co.	Canadian Pioneer. Inv. 1 (E 1579). Entered for warehouse.	Mar. 30, 1922

A return of the invoice and entry is requested.

Answer to protest

Wool—Emergency tariff.
J. W. K./L. P.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., June 28, 1922.

Protest No. 11661.
Importer, Stone & Downer Co.
Invoice No. Melbourne 774.
Entry No. W H 1579.
Date, Mar. 23, 1922.

The merchandise subject of protest consists of Australian greasy wool, entered and returned for duty at the rate of 30 cents per pound under paragraph 18 of the emergency tariff, being, in the opinion of this office, wool of a class therein provided for, and, inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified.

No samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

113 *Protest 951310/11598*

BOSTON, *May 4, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 30 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 8 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the said emergency tariff act.

Answer to protest

Wool—Emergency tariff
J. W. K./L. P.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., June 12, 1922.

Protest No. 11598.
Importer, John A. Conkey & Co.
Invoice No. Melbourne 697.
Entry No. W H 1207.
Date, Jan. 31, 1922.

The merchandise subject of protest consists of Australian greasy wool, entered at 15 cents per pound, but returned at 30 cents per pound, under paragraph 18 of the emergency tariff, being, in our opinion, wool of a class therein provided for, and, inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified.

No sample retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

116 *Protest 953320/11742*

BOSTON, *June 15, 1922.*

Honorable Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties and your decision assessing duty at 30 cents per pound, or other rate or rates, on certain wool covered by entries below named. The ground of objection under the tariff act of October 3, 1913, and under the emergency tariff act of May 27, 1921, is that said merchandise is not dutiable as assessed, but is—

1. That the merchandise in question is not a wool or hair such as is named or provided for in either paragraph 18 or 19 of said emergency tariff act.

2. We claim further that the merchandise in question is free of duty under paragraph 650 or 651 or 503 of the act of 1913, or at 5 per cent under paragraph 286 or at 15 per cent or 20 per cent under paragraphs 305 and 306, respectively, and that said merchandise is not subject to any duty under the emergency tariff act.

3. We claim further that the merchandise here in question is provided for by name in the tariff act of 1913 and is therefore excluded from the general provision of paragraphs 18 and 19 of Title I of the emergency tariff act.

4. Alternatively with the above claims, we claim that if any of the merchandise covered by the entries named below is subject to duty

under the emergency tariff act, it is subject to only 15 cents per pound provided for in paragraph 18 of said Title I.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in par. 386 of said act of October 3, 1913, and by the rules as to ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

117 This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles and you and the Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

Vessel	Entered	Bond No.	Liquidated	Marks and Nos.
Boswell	4/12/22	1731	5/19/22	Various as per entries and invoices.
Crofton Hall	4/7/22	1660	5/26/22	
Songdal	4/29/22	1900	5/29/22	

Respectfully,

J. A. KARNHEIM,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in reference to this protest to Thaddeus S. Sharretts, New York City.

[Indorsed:] Boston, Mass. J. A. Karnheim. Protest. Duty on wool. Received June 15, 1922. Custom house, Boston, Mass. Custom house, Boston. Paid July 14, 1922. I. E. P., cashier's office. Naval office, Boston, July 14, 1922. W H entries 1731, 1660, 1900. Invoices 1/2, 1, 1. Office of U. S. Appraiser, Boston, Mass. Received July 20, 1922. 953320. 11742.

It is further alternatively claimed that said merchandise is dutiable under paragraph 385 of said act of October 3, 1913, at 10 per cent ad valorem, or if not so, at 15 per cent ad valorem.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in paragraph 386 of said act of October 3, 1913, and by the rules as to the ordinary meaning of words, the statutory meaning, com-
120 mercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under section 3 of said act of October 3, 1913, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach.

This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein. The entry numbers and other marks, numbers, and data, below given, are given under duress, without prejudice, to aid you and not to limit this protest. The excess paid under compulsion to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

Vessel	Entered	Entry No.	Liquidated	Marks and Nos.
Winifredian.....	3/4/22	7916	3/30/22	Various as per entries and invoices.

Respectfully,

LOWE, DONALD & CO.,
By WATERHOUSE & LOCKETT,
Attorneys for Importer.

50 CONGRESS STREET, *Boston, Mass.*

Send all notices in references to this protest to Thaddeus S. Sharretts, New York City.

Marks and numbers of cases covered by within protest:

[JD. & S.] 59. Invoiced by James Drummond & Sons, Ltd., on 30th Jan., 1922.

[STS.] 89. Invoiced by Sir Titus Salt Bart Sons, on 11th Feb., 1922.

[JF. LTD.] 6995. Invoiced by Josiah France, Ltd., on 1st Feb., 1922.

[Indorsed:] Boston, Mass. Lowe, Donald & Co. Protest. Duty on woolen goods. Received Apr. 17, 1922. Customhouse, Boston, Mass. Customhouse, Boston. Paid May 17, 1922. I. E. P., cashier's

office. Naval office, Boston, May 17, 1922. Office of U. S. Appraiser, Boston, Mass. Received May 20, 1922. Entry 7916—Invoices #1/3. 950402. 11553.

121 *Report of the collector*

11553

UNITED STATES CUSTOMS SERVICE,
COLLECTION DISTRICT NO. 4,
Port of Boston, Mass., May 26, 1922.

To the BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, N. Y.:

I submit herewith the protest described below with the accompanying invoices and entry against my assessment of duty at the rate of 35 per cent ad valorem and 45 cents per pound on certain worsted goods, so called, claimed to be—the claim of the importers is set forth in the inclosed protest—returned by the appraiser as entered and assessed with duty under paragraph 288, act of October 3, 1913, and paragraph 19, act of May 27, 1921, in accordance with the advisory classification of the appraiser.

The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest and payment of fee is concerned.

I inclose herewith the special report of the appraiser, dated the 24th instant, who states that "The merchandise subject of protest consists of wool cloth, entered and returned for duty at the rate of 35 per cent ad valorem under paragraph 288 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants. In the opinion of this office the merchandise is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff and is therefore dutiable as reported."

Respectfully,

W. W. LUFKIN,
Collector.
By R. G. FRYE,
Deputy Collector of Customs.

No.	Name of importer	Vessel	Date of entry
11553	Lowe, Donald & Co.	Winifredian. Inv. 1/3 (E. 7916). Entered for consumption.	Mar. 4, 1922

The appraiser reports samples retained.
A return copy of the entry and invoices is requested.

122 *Answer to protest*

Wool cloth—Emergency tariff.
W. W. H./O. C. B.

UNITED STATES CUSTOMS SERVICE,
APPRAISER'S OFFICE,
Port of Boston, Mass., May 24, 1922.

Protest No. 11553.
Importer, Lowe, Donald & Co.
Invoice Nos. Bradford 662, Bradford 453, Bradford 486.
Entry Nos. 7916/2, 7916/1, 7916/3.
Dates, Mar. 4, 1922; Mar. 4, 1922; Mar. 4, 1922.

The merchandise subject of protest consists of wool cloth, entered and returned for duty at the rate of 35 per cent ad valorem under paragraph 288 of the tariff act of 1913 plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants.

In the opinion of this office the merchandise is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff and is therefore dutiable as reported.

Samples retained.

Respectfully,

S. W. GEORGE, *Appraiser.*

Inclosure.

Statement of evidence

[Title omitted.]

Appearances: Thaddeus S. Sharretts (by Edward P. Sharretts, Esq.); Waterhouse & Lockett (by William E. Waterhouse, Esq., and Joseph F. Lockett, Esq.), counsel for the importers; John Francis Strauss, Esq., and George F. Puckhafer, Esq., associate counsel; William W. Hoppin, Esq., Assistant Attorney General; Charles D. Lawrence, Esq., and Harry M. Farrell, Esq. (special attorneys), for the United States.

123 *Colloquy between General Appraiser and counsel*

Mr. SHARRETTS. If your honor please, we have selected certain protests out of the while lot to make a test case on. I don't suppose, if you will just read those, it won't be necessary to answer to all of them.

General Appraiser MCCLELLAND. Whose protests have you?

Mr. SHARRETTS. The first one is J. Karnheim, 953320, collector's No. 11742. The next one is No. 941808 of Stone and Downer—that is on yarns. The next is 942569, Stone and Downer, on wool. The next is 942570, Stone and Downer, on wool. The next is 951310, John A. Conkey, on wool. The next is 952179, Stone and Downer, on wool. The next is 950402—that is on wool cloth, Lowe, Donald

and Company. The next is 952881, Rice and Fielding, on camel's hair noils. The next is 941532, the same importer, on cashmere noils. If your honor please, these last two that I have read are camel's hair noils and cashmere noils, present a somewhat different issue from all the others, and I think should be made the subject of different records. We would like to have it made the subject of a separate record.

Mr. HOPPIN. The Goverment has no objection to that.

Mr. SHARRETTS. I would like noted as counsel in this case also, Waterhouse and Lockett, Mr. Puckhafer, and Mr. Strauss.

Mr. HOPPIN. If your honor please, I understand that the attorneys for the importers agreed informally with the Government that they would not object to the continuance of these cases after they had decided to rest. I understand that that matter will be held open for the present. That there will be no objection to the continuance to New York for further hearing.

Mr. SHARRETTS. We have no objection provided it can be arranged at as early a date as possible.

Mr. HOPPIN. At as early a date as possible.

Mr. SHARRETTS. Do I understand that the Government is to put its proof in at Boston?

General Appraiser MCCLELLAND. I understand that the Government wants them transferred to New York for the purpose of putting in proof there.

Mr. HOPPIN. I think the Government will stand on its rights in the matter. The Government has proof to introduce here, and they are prepared to introduce it after the importers rest their case.

Mr. SHARRETTS. Of course, we are not at this time prepared to say that we are going to rest our case in Boston to-day. We can only tell that after going ahead with the proceedings. If the case goes to New York we will want to put testimony in there, if it goes there.

General Appraiser MCCLELLAND. There is nothing for me to do until I find out whether you gentlemen are going to agree.

124 Mr. HOPPIN. Of course the Government is not compelled to put in any testimony until after the protestants rest their case.

General Appraiser MCCLELLAND. As I understand, there is really no objection to a transfer to New York. The only possible objection that I can see is over what the status would be as to the conditions of transfer.

Mr. HOPPIN. Of course, if they want to have the cases again transferred to Boston for further testimony, we should then put in our testimony when it was transferred to Boston again. In other words, if they want to put in further evidence in New York, we feel that they should put in their case and rest before we put in ours, under the usual rules of procedure.

General Appraiser MCCLELLAND. Of course, you can have rebuttal in any case; the only question being whether they would be limited to rebuttal.

Mr. HOFFIN. Yes, sir; of course that is as I understand it; the usual procedure.

General Appraiser MCCLELLAND. If you are not ready to agree on anything definitely, suppose you go ahead and put your proof in and talk about the terms afterwards.

Mr. SHARRETTS. We can't tell whether we are going to rest until we have gone ahead. If your honor please, this case deals with paragraph 18 of the emergency act. The provision there in question is that phrase, "Wool commonly known as clothing wool." It is our contention that the wool here before the court is not wool commonly known as clothing wool. Therefore it is not subject to the provisions of the emergency act, but comes squarely within the wool provision in the free list in the act of 1913. As to the samples, we have agreed on samples—the Government and importers—as representative samples. These samples are marked on the outside according to the protest and the invoice and the cases.

General Appraiser MCCLELLAND. You mean you have agreed with Government counsel?

Mr. SHARRETTS. Agreed with Government counsel. These four samples that I am going to describe represent the merchandise covered by protest 942570 of Stone and Downer. They are marked in red ink on the paper covering Exhibits 1, 2, 3, and 4. We ask that they be marked so in the record. I offer them in evidence.

General Appraiser MCCLELLAND. No objection, they will be so marked.

There being no objection the samples just referred to were admitted in evidence and marked "Exhibits 1, 2, 3, and 4, 942570, etc., 9/21/22."

125 Mr. SHARRETTS. This sample is covered by protest 952179 and covers the merchandise indicated on the wrapper. I ask that it be marked "Exhibit 5."

There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 5," etc.

Mr. SHARRETTS. This sample I am about to offer covers the merchandise in protest 952179. The merchandise represents, as indicated on the wrapper in accordance with the invoice description. I ask that it be marked "Exhibit No. 6."

There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 6," etc.

Mr. SHARRETTS. This sample I am about to offer represents the merchandise covered by protest 952179. The mark on the package indicates the merchandise on the invoice. I ask that it be marked "Exhibit No. 7."

There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 7," etc.

Mr. SHARRETTS. The package I am now about to offer contains the merchandise covered by protest 952179, the mark on the package indicating the merchandise on the invoice. I ask that it be marked "Exhibit No. 8."

There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 8," etc.

Mr. SHARRETTS. The package I am about to offer now represents the merchandise in protest 942179, the mark on the package indicating the merchandise on the invoice. I ask that it be marked "Exhibit No. 9."

There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 9," etc.

Mr. SHARRETTS. The Government selected some protests last night that they want to put into this record, and they also, through the examiner, got some samples. We have not had a chance to see them yet, but I understand they are here, but just in what shape I can not be responsible for.

General Appraiser MCCLELLAND. What do you mean when you say they "selected some protests"?

Mr. SHARRETTS. In addition to those we have selected in the test. Of course, they have a perfect right to do that. We have read the protests off. The only question is as to the exhibits. I am a little bit in the dark about those.

General Appraiser MCCLELLAND. Are these official samples or not?

123 Mr. SHARRETTS. I don't know whether you would call themm official or not.

General Appraiser MCCLELLAND. Are they agreed upon?

Mr. SHARRETTS. They are agreed upon. The examiner selected them from the warehouse last night.

JAMES H. KELLY, appearing as a witness for the importers, having been duly sworn, testified as follows:

By Mr. SHARRETTS:

Q. You are the examiner, are you, at the port of Boston?

A. I am.

Q. What kind of merchandise do you pass on?

A. Wool, for one thing, and cotton.

Q. Did you, at the request of Mr. Hoppin, select certain samples last night in connection with protests on here this morning?

A. This morning I did; yes, sir. I selected what we would take last night, but I drew the samples this morning.

Q. I show you sample here and ask you what shipment that was drawn from?

A. Bond No. 1207.

Q. How about the protest number?

A. Protest 951310.

Q. How is the merchandise indicated as to compare with the invoice; does it represent a part of the merchandise only?

A. It represents a part; it is merely representative of the whole invoice.

General Appraiser McCLELLAND. It represents all of the wool?

The WITNESS. Yes; it is not all the same grade.

Mr. SHARRETTS. May I ask that that be marked "Exhibit No. 10"?

(There being no objection, the sample just referred to is admitted in evidence and marked "Exhibit 10," etc.)

Q. I show you another sample and ask you where you got that from?

A. That is all from the same invoice and the same protest.

Q. As Exhibit 10?

A. Yes. It is a little different quality of wool, that is all.

General Appraiser McCLELLAND. The same class of wool but a different quality; is that it?

The WITNESS. Yes.

(There being no objection, the sample just referred to is admitted in evidence and marked "Exhibit 10–A," etc.)

Q. What do you mean by the same class?

A. Well, it is all Australian wool.

General Appraiser McCLELLAND. The same kind of wool, only a better quality than the other?

The WITNESS. Yes.

Q. I show you this sample and ask you if you drew that?

A. Yes; I did.

127 Q. What shipment is that from?

A. Protest 953320, bond No. 1660.

Q. Have you indicated the merchandise on the invoice?

A. That is a South American.

Mr. SHARRETTS. I offer that sample in evidence.

(There being no objection, the sample just referred to is admitted in evidence and marked "Exhibit 11," etc.)

Q. I show you this package and ask you what you drew that from?

A. Protest 942569, bond No. 768.

General Appraiser McCLELLAND. Does that represent all of the wool covered by the invoice?

The WITNESS. Yes; I should say so.

(There being no objection, the sample just referred to is admitted in evidence and marked "Exhibit 12," etc.)

Q. I show you this sample and ask you what that represents?

A. That belongs to the same protest that just preceded this one.

Q. It is from the same protest as Exhibit No. 11?

A. 953320, bond No. 1660. It is a little different grade.

Q. You say this last exhibit—what was the condition of the bale that you selected that from?

A. The bale, in that bale I was able to pull a whole fleece.

Q. When you say that bale, which one do you mean?

A. I mean the first exhibit on the floor.

Q. You are now referring to Exhibit 11?

A. Yes.

Q. What about that?

A. That was in the position that I was able to draw the whole fleece. This here [indicating] is only a part of a fleece.

Q. This last one is really not representative?

A. It is representative of the type of wool.

By General Appraiser McClelland:

Q. From the same bale as sample Exhibit No. 11?

A. No; it is not.

Q. Let us know just exactly what it is. Do you mean that the whole fleece in Exhibit 11 did not represent all the wool covered in that protest?

A. Exhibit 11 is practically a whole fleece. This is only parts of a fleece.

Q. What does this represent that the other does not?

A. There is some parts of the fleece that are missing in this. The same is there in these other samples here.

Q. Has that anything to do with the character of the wool?

A. No; it has not; not particularly.

128 By Mr. Sharretts:

Q. I can't see what purpose these samples serve.

A. No more than it is a different grade from the other wool.

Q. Why couldn't you draw this the same as you did that?

A. They were piled in the same way, one on top of another; they weigh a thousand pounds apiece. I am not a terribly strong man.

Mr. Hoppin. The importers have selected four samples from the same invoice. I see no reason why this should not go in.

Mr. Sharretts. They represent four different qualities.

Q. Is this a different quality from Exhibit 11?

A. Yes; it is drawn from a different bale—the bale numbers of which is on the package as drawn.

(There being no objection, the sample just referred to was admitted in evidence and marked "Exhibit 13," etc.)

Mr. Lawrence. What protest was this with Mr. Kelley?

The Witness. 953320.

Louis B. Harding, appearing as a witness for the importers, having been duly sworn, testified as follows:

By Mr. Sharretts:

Q. What is your business, Mr. Harding?

A. I am an importer and handle wool on commission.

Q. What is the name of your concern?

A. Louis B. Harding & Co.

Q. What is your position?

A. I am a member of the firm.

Q. How long have you been in this business?

A. About 14 or 15 years.

Q. What experience—can you narrate just what your experience has been in connection with wool?

A. Why, I secured my original training by working as a wool sorter in a mill; sorting wool for about 18 months; assorting wool is the final process before the wool goes to the machines, and that gives a very good idea of the more preliminary operations. Since that time I have been actively engaged in buying and selling wool, and have had occasion to handle very considerable quantities of wool in connection with purchases and sales I have made.

Q. And is it a part of your business to be familiar with all the various classes and grades of wool?

A. Yes.

Q So that you can identify them?

A. Yes.

Q. Do you deal at all in yarns?

A. Yes; I do; wool and its products—wool tops, noils, et cetera.

129 Q. Mr. Harding, do you receive periodically from the Government, blanks to be filled out showing the supplies of wool you have on hand?

A. Yes.

Q. Those blanks indicated the various grades and classes of wool?

A. Yes.

Q. I will show you this [handing paper to witness], and ask you if you can recognize that as such a blank?

A. Yes; that is. I think that is the identical blank. It is very similar to that.

Q. That you filled out; what did you do with that when you filled it out?

A. You return it to a department of the Government at Washington.

Q. Is that the Department of Agriculture?

A. I think it is, but I can not be sure; but they have a printed return envelope with it.

Mr. SHARRETTS. I offer that in evidence and ask that it be marked.

Mr. HOPPIN. I will object to that as incompetent, irrelevant, and immaterial.

General Appraiser MCCLELLAND. What does he hope to prove by this blank?

Mr. SHARRETTS. It shows the officially recognized grades and classes of wool.

General Appraiser MCCLELLAND. I don't think you can prove classes of wool in that way.

Mr. SHARRETTS. Why, a document issued and sent out by the United States Government to a member of the trade.

General Appraiser MCCLELLAND. That would not control classification.

Mr. SHARRETTS. It might not control it actually, but it seems to me that an importer is entitled to have before the court passing on the classification of his merchandise a blank issued by the United States Government specifying various grades and classes of wool

used by the Government itself. You can assume that the United States Government would not send out something that they did not recognize as being so.

General Appraiser McCLELLAND. There is constantly being combated the ideas of representatives of the Government on one thing or another all the time.

Mr. SHARRETTS. Not by the Government itself.

General Appraiser McCLELLAND. One department of the Government sometimes attacks the other.

Mr. SHARRETTS. It seems to me that the taxpayer is entitled to have before the court a document issued by the United States Government.

130 General Appraiser McCLELLAND. I do not look upon that as a document. I will sustain the objection.

Mr. SHARRETTS. I take an exception and ask that it be marked for identification.

(Paper marked "A for Identification," etc.)

Q. I show you here, Mr. Harding, a publication entitled, "The Market Reporter," published weekly by the United States Department of Agriculture; this particular pamphlet under date of May 14, 1921, do you recognize that [handing paper to witness]?

A. Yes, sir.

Q. Do you receive those regularly from the Department of Agriculture?

A. Yes, sir.

Q. I call your attention to page 310 of this pamphlet specifying various grades and qualities of wool; do you recognize those grades and qualities?

A. Yes, sir.

Mr. SHARRETTS. I offer that in evidence and ask that it be marked as an exhibit.

Mr. HOPPIN. I object to that as incompetent, irrelevant, and immaterial.

Mr. SHARRETTS. If your Honor please, that is an official publication issued by the United States Government showing the officially recognized grades and classes of wool.

General Appraiser McCLELLAND. Does it indicate who is the author?

Mr. SHARRETTS. The author of it is the United States Department of Agriculture.

General Appraiser McCLELLAND. I think that is open to the same objection as the other. It is an opinion expressed by an unknown individual, or a classification prepared by an unknown individual. He is not here to be examined as to his competency.

Mr. SHARRETTS. It has been held over and over again that publications, for instance, of the Weather Bureau, are competent evidence to establish the weather on a certain date. It has been held that geographical maps published by the Department of the Interior are competent evidence to establish the location of land, and why, if that is competent, this is not. The publications themselves are ac-

Q. Is there a difference? I think you stated that you were familiar with the yarns, too.

A. Yes.

Q. Is there a difference between a woolen yarn and a worsted yarn?

A. Yes, sir.

Q. Can you state briefly what that difference is?

A. The fundamental difference is that a worsted yarn is composed of long fiber wool which is laid parallel in the yarn. A woolen yarn is composed of a short fiber wool which must be the opposite of parallel in the yarn in order to secure the strength in the yarn.

Q. And the yarns themselves are entirely different?

A. Yes; they are quite different.

Q. Mr. Harding, will you look at Exhibit 1 here and state what grade and class that is [showing witness sample Exhibit 1]?

A. That is a low quarter blood combing wool.

Q. Would that be regarded in the trade at all as a clothing wool?

A. Oh, no, sir.

Q. Will you please look at Exhibit 2 and state what grade that is [handing witness Exhibit 2]?

A. That also is a low quarter blood combing wool.

Q. Would that be regarded in the trade as a clothing wool?

A. No, sir.

Mr. HOPPIN. I object to that, your honor.

General Appraiser MCCLELLAND. On what ground?

Mr. HOPPIN. As a leading question.

General Appraiser MCCLELLAND. Yes; it could be put in another way. The way to overcome that would be to ask how he knows.

Mr. HOPPIN. I object on the further ground that this is not a question of commercial meaning, and therefore is irrelevant.

General Appraiser MCCLELLAND. I think he is going further. It may be, Mr. Hoppin, that the commercial and the common meaning are the same. I think I will allow the answer to stand, but that evidence would not be sufficient. We are not concerned here so much with the commercial understanding at all. That is one reason why I asked the witness if they were all based on his commercial experience. The question is whether it is commonly known.

Mr. HOPPIN. That is the question.

134 General Appraiser MCCLELLAND. It is not a question of commercial knowledge or name at all.

Q. Will you look at Exhibit 3, please, and state what grade and class that is?

A. That is a low quarter blood combing wool.

Q. How is that generally known in the trade that you have been dealing with?

A. That is generally known as New Zealand crossbred.

Q. Is it known either as combing or clothing wool?

A. Yes; that is distinctly combing wool.

Mr. HOPPIN. I think, if your honor please, if the attorney will confine himself in asking direct questions rather than trying to lead the witness——

Mr. SHARRETTS. I maintain that is not leading.

General Appraiser MCCLELLAND. Any question is leading that suggests the answer.

Mr. SHARRETTS. It suggests alternatives. How could he tell what I want?

Mr. HOPPIN. It is putting answers into the mouth of the witness.

General Appraiser MCCLELLAND. Ask him how that wool is known.

Q. Well, how is the wool known? Will you look at Exhibit 4 and state what that wool is?

A. This is a quarter blood combing.

Q. How is that known throughout the trade?

A. Well, it would be known as a quarter blood combing wool.

Q. Will you look at Exhibit 5 and state what that is?

A. That is a merino combing wool.

Q. How would that be generally known?

A. Either as a merino combing or fine or Australian merino combing wool would be the general designation for that.

Q. I show you Exhibit 6 and ask you what that is?

A. That is a fine combing wool.

Q. What is that generally known as?

A. Fine combing, the distinction between the merino combing wool and fine combing wool is more a matter of words than anything else.

Q. Is it practically the same?

A. Yes; it is practically the same.

Q. I show you Exhibit 7 and ask you what that is?

A. That also is a merino combing.

Q. How is that generally known in the trade?

A. The same way, merino combing wool.

Q. Will you look at Exhibit 8 and state what that is?

A. Also a merino combing wool.

Q. How is that known generally?

A. The same.

135 Q. I show you Exhibit 9 now and ask you what that is?

A. That is a merino combing wool.

Q. How is that generally known?

A. As fine combing wool—merino combing.

Q. I show you Exhibits 10–A and ask you what kind of wool that is?

A. That is a fine combing wool also.

Q. How is that generally known?

A. As fine or merino combing wool.

Q. I show you Exhibit 10 and ask you what kind of wool that is?

A. That also is a fine combing wool.

Q. And how is that generally known?

A. As a fine or merino combing.

Q. I show you Exhibit 11 and ask you what that is?
A. That is a medium combing wool.
Q. How is that generally known?
A. Medium combing or cross-bred combing.
Q. I show you Exhibit 12 and ask you what kind of wool this is?
A. That is a medium combing wool.
Q. How is that generally known?
A. As medium combing wool.
Q. I show you Exhibit 13; will you state what kind of wool that is?
A. That is a medium clothing wool.
Q. Now, Mr. Harding, in the case of these exhibits that you have referred to as combing wool, what system of manufacture do they go into?
A. They go into the manufacture of worsted yarns.
Q. Mr. Harding, will you state what different branches of the woolen industry that you have come in contact with in your experience?
A. Why, the worsted branch, the woolen branch, the felt manufacturing, the carpet branch, blanket branch, hosiery, and underclothing branch. Does that answer your question?
Q. Those are the manufactures I presume that you refer to?
A. Yes.
Q. How about in the case of the raw wool itself?
A. I don't think I quite understand that question.
Q. Have you come in contact with graders?
A. Oh, yes.
Q. And sorters?
A. Yes.
Q. And shop superintendents in the factories?
A. Yes.
Q. And other dealers?
A. Yes.
General Appraiser McCLELLAND. What do you mean by "contact"? Anybody might come in contact with these people.
Mr. SHARRETTS. I mean in the course of his dealings—had business dealings with.
136 General Appraiser McCLELLAND. Have you had dealings with all of these people?
The WITNESS. No; I don't think I have.
General Appraiser McCLELLAND. Mere contact amounts to nothing.
Q. In what way have you come in contact with them?
A. I have sorters, for instance, or mill overseers or overlookers, and I have come in contact with them on account of possible investigation of wools which have gone to those mills in which these men were employed, and I have very often occasion to go to a mill and see some wool that I have sold them in work at the mill.
Q. Are you familiar with the terms they employ in connection with wool?
A. Yes.

Q. Will you state whether or not they differ from those terms as you have used them here in your testimony?

Mr. HOPPIN. I think that is clearly incompetent. The best evidence of that—this gentleman is not competent to testify as to general terms of that character.

Mr. SHARRETTS. It is a part of his business.

General Appraiser MCCLELLAND. I think it is competent for him to say, Mr. Hoppin, what his general experience has been with the people that he has had dealings with. I think I will overrule the objection.

Mr. HOPPIN. Exception.

A. That refers to wool sorters and superintendents and people in one particular mill.

Q. Generally speaking?

A. As a general proposition each mill has its own name and designation for the various qualities of wool as they go right through the mill. A wool may be their 60's and may be made into their 60's, tops, yarns, and go right through under the name of 60's. It would not mean anything to anybody else.

Q. But you have used the terms "combing" and "clothing" here. I wish to know whether the way you use them is the way that they are generally used among the people that you have come in contact with in the manner you have stated?

Mr. HOPPIN. I object to the question. I object to the form of the question. It is leading.

General Appraiser MCCLELLAND. It is very leading. You asked a very broad question before, whether there was any difference in the terms used by him and the terms used by other people. He gave you an answer, and now you are asking another question which in itself suggests the kind of an answer you want. I sustain the ob-
137 jection. If no objection is made I do not care what question you ask, and if objection is made I will rule on it.

Mr. HOPPIN:

Q. Mr. Harding, by merino combing wool I presume you mean the merino blood, do you not?

A. I understand it to mean practically merino blood, but I think there is a distinction between an absolutely straight merino and what is known as merino wool to the trade. I think I am right in saying that a perfectly straight merino is a very rare breed of sheep.

Q. You, from your experience as a woolman in the trade, know, do you not, that wools are quite often bought by blood, that that is the common usage in the trade?

A. Yes, sir.

Q. And when you speak of merino combing wool you mean merino blood, do you not?

A. Yes, sir.

Q. When you speak of combing, that is a process, is it not, in the manufacture, from the raw wool into the finished article?

A. For one branch of the industry, in the worsted industry, combing is one of the processes.

Q. One of the processes of preparation of raw wool for the finished article?

A. Yes, sir.

Q. And in the same way carding is one of the processes?

A. Yes, sir.

Q. And is all wool that is combed carded?

A. Yes, sir.

Q. Now you said, did you not, that in general the long staple wool was used for worsteds and the short carded wool for woolens?

A. The short staple wool for woolens.

Q. That would be the wool was suitable only for carding purposes and not for combing, would you say?

A. Yes, sir.

Q. It would be confined to the wool that was suitable only for carding and not for combing?

A. As a general proposition that is the material used for woolens.

Q. Are you conversant with the dry-spun process?

A. Yes, sir.

Q. Would your definition apply to that process?

A. Yes, dry spinning requires a combed wool just the same as oil spinning.

Q. Do you know if any of the carded wools are used in worsteds?

A. Well, your definition of carded wools I do not quite understand.

Q. I understood you to say that the wools used in the woolens are not suitable for the combing process?

A. Yes, that is right.

Q. But are suited for the carding process?

A. Yes, that is right.

Q. In view of your answer I would like to ask whether the wool which is suited for the carding is used in the worsteds as well as the wool which is used in the combing process?

138 A. There is a little difficulty there, because wools which are going into worsteds are carded before they are combed, so practically all wool which goes into either wools or worsteds has been carded.

Q. I ask you a question. If you will, please answer me directly. You said that the wool which was used for worsteds was the wool which was suitable for the combing process?

A. Yes, sir.

Q. And that combing wool was both carded and combed; you said that the wool used for woolens was the wool which was not suitable for the combing process, but could only be carded?

General Appraiser McCLELLAND. Is that altogether because of the length of the staple?

The WITNESS. Yes.

Q. I again ask the question whether—after your answer that the wool suitable only for carding is used for woolens and the wool suitable for the combing process is used only for the worsteds, as to whether there was at any time any of the wool suitable only for the carding purposes is used in worsteds?

A. No, sir. That is, as a general proposition, as I understand your question.

Q. I want an answer yes or no.

A. No, sir.

Q. Wool suitable for carding purposes you say would probably be used in woolen uses?

A. Yes, sir.

Q. By probably, do you mean that the wools also suitable for combing purposes could be used for woolens?

A. It is perfectly possible to use some of them for woolens, but it is not practical.

Q. Now by these combing processes and the carding process these wools are made into yarns, are they not?

A. Yes, sir.

Q. And those yarns are made into clothing worsteds and woolens?

A. Generally, yes.

Q. And for what purpose are those cloths used?

A. Well, there is a multitude of purposes for them.

Q. Well, commonly or generally?

A. They may be used for starting on the lower end, they may be used for carpets.

Q. I am asking what are they generally or commonly used for.

A. Worsteds.

Q. Do you mean the bulk of the worsteds and woolens?

A. Yes, I presume that the bulk of them go into the manufacture of clothing.

Q. You say you "presume": you have had no experience, have you, Mr. Harding, in the wool trade? You know, do you not, that they are used for clothing, the bulk of them?

A. Yes, the greater percentage of woolens and worsteds both go into clothes.

139 Q. You are conversant, are you not, with camel's hair, Angora goat, and alpaca?

A. Yes, sir.

Q. Would you say those hairs are suitable for the combing process?

A. Generally; yes.

Q. You would say that the fiber and staple is sufficiently long for that combing process, would you not?

A. Yes, sir.

Q. How would you define the length of staple which is suitable for the combing process?

A. That depends entirely on the quality of the wool.

Q. Well, then, as I understand it, it is not a matter of length but it is a matter of quality?

A. The quality of the wool determines the length which would be suitable for combing purposes; yes.

Q. So I understand your answer to be, it is the quality of the wool which determines? Strike out the question. I will withdraw the quetsion. What would you say would be the length of staple which would be suitable only for carding purposes?

A. Wool that is—I can't very well answer that question in that form. Do you mean in inches or something of that sort?

Q. Does that depend upon the quality of the staple to a certain extent?

A. The quality of the wool?

Q. Yes; the quality of the wool.

A. Yes, sir; it depends entirely on that.

Q. You stated, Mr. Harding, that one of the classes was carpet clothing wool. Will you define what carpet clothing wool is?

A. It is a wool of carpet grade of such length that it can not be combed, and there are worsted yarns and woolen yarns in the carpet industry just the same as there are in the industries taking the finer grades of wool.

Q. That is used for the manufacture of carpet, is it not?

A. Generally; yes.

Q. Then that wool is not commonly known as clothing wool?

A. Clothing carpet wool is commonly known as clothing wool.

Q. What would you define clothing carpet wool to be?

A. A carpet wool which is of insufficient length of staple to be combed.

General Appraiser McCLELLAND. Would be what?

The WITNESS. Would be a clothing carpet wool.

Q. And that, I presume, would be suitable for carding?

A. Yes.

Q. That grade is used for the making of carpets, is it generally?

A. Generally; yes, sir.

Q. Generally and commonly it is used for the making of carpets, is it not?

A. Generally; yes. Recently it has been more or less used for other purposes.

140 Q. I ask, Mr. Harding, if you will examine Exhibit 13. I understand you to state that that is medium clothing wool?

A. Yes.

(Witness examines Exhibit 13.)

Q. I now ask you, after an examination of that sample, as to whether it is possible to comb that wool by the French combing method or any other method that you know of?

Mr. SHARRETTS. I think it is immaterial, whether it is possible or not. I will withdraw the objection.

A. Yes; I should say—yes; it would be quite possible to comb that, but when you got it combed you would not have very much of it left.

Q. If you would confine yourself to my questions I would appreciate it—and not volunteer anything.

A. Yes, sir.

Mr. SHARRETTS. I think the witness ought to be allowed to answer fully.

General Appraiser MCCLELLAND. It may be possible to make a suit of clothes out of leather, but it would not be practical. It might be possible and not practical, or commercially profitable to comb that wool, and I think the witness ought to be allowed to say so, if that is his judgment.

Q. Mr. Harding, do you know, from your experience as a dealer in wool as to whether the bulk of importations of wools is suitable for the combing process or those suitable for the carding process?

Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. What has that got to do with the issue here, Mr. Hoppin, the question is, what are these wools? Not what other grades or qualities or classes of wools that may have been imported from time to time.

Mr. HOPPIN. We are here dealing with the intent of the law, which, of course, is a question for the court to decide.

General Appraiser MCCLELLAND. I think that the question at issue is the classification of these wools, and I will sustain the objection.

Mr. HOPPIN. I should like to have an exception.

General Appraiser MCCLELLAND. What other wools that are not here involved does not concern this issue.

Mr. HOPPIN. We are to decide on the intent of the law, if your honor please; the meaning of a certain paragraph in the emergency tariff act.

General Appraiser MCCLELLAND. All I know about the law is what I have before me here; what it reads. I can't go behind that.

By Mr. LAWRENCE:

Q. Mr. Harding, isn't it a fact that in commercial transactions wool is graded according to the fineness of the fiber and the
141 diameter of that fiber?

A. That is one of the factors entering into the grading; yes, sir.

Q. Blood is another consideration, is it?

A. Yes, sir.

Q. And in grading wool as fine or medium or by the other terms which you have used, those grades could only be determined, could they, by one who is familiar with the handling of wool?

A. That is right; yes.

Q. Now, in speaking of combing wool, what is the shortest length which, in your experience, is commonly combed?

A. For any particular grade?

Q. Of any grade; what is the shortest length of fiber of any grade of wool which is combed?

A. That is a tough question to answer. I would have to see a sample of any lot in question, really, to answer that. You don't carry wools in your mind as so many hundrds in diameter or six inches in staple or something like that. It would seem that you acquire it by the handling of wool for a great many years, and you can't answer that question as put.

By General Appraiser McCLELLAND:

Q. Do you determine wholly or to some extent whether wool is suitable for combing by the length of the staple?

A. Yes, sir.

Q. And if you had a sample before you what would you say was the minimum length that would be suitable for combing?

A. A wool of the length of that sample I have here would be easily combed if it was a merino wool.

Q. Yes; but you don't know what was the length?

A. You can't say.

Q. No; but as a practical commercial proposition what would you say was the minimum length that the staple must be to be suitable for combing?

A. Of any wool at all?

Q. Of any wool at all suitable for combing, as a practical commercial proposition?

A. Oh, I should say as long as that [indicating].

Mr. LAWRENCE. Indicating an inch and a half.

Mr. SHARRETTS. May be the witness has not made it perfectly clear that they do not accurately go through the physical measurement.

General Appraiser McCLELLAND. We have got here an exceptionally clear-headed and apparently competent witness to take care of himself, and he understands the English language, if anybody does, and if he can't answer this question he will say that he can't.

The WITNESS. As near as I can say in actual figures, your suggestion of an inch and a half would be about the minimum—

142 I don't like—I say that inch and a half under protest, because I don't believe I ever saw a ruler in connection with the business of wool.

By Mr. LAWRENCE:

Q. Has the distinction which you have drawn between combing and carding always been the same, in your experience?

A. In my experienc, yes.

Q. It is a fact, is it not, that merino wools are combed?

A. Oh, yes.

Q. And some of them are combed to-day which may not have been combed forty years ago? Isn't that so?

A. Yes, I think that is true.

General Appraiser McCLELLAND. I think you are carrying him back too far.

Q. In other words, wools which could be combed to-day could not have been combed a certain number of years ago?

A. I think that is true.

Q. Do you know whether mohair and alpaca are commonly made into clothing?

Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. That requires only an answer yes or no. Objection overruled.

A. No, I couldn't testify to that.

By General Appraiser MCCLELLAND:

Q. Then you don't know?

A. No, I don't know.

Q. Say "No": that is all there is about it.

A. That question, does the bulk of them go into clothing—no, I don't know about that.

Q. Have you sold at wholesale during your commercial experience, wools of all the different qualities here?

A. I think I have sold about every kind of wool there is.

Q. Do you sell direct to the manufacturer?

A. Yes, sir.

Q. To the mills?

A. Yes, sir.

Q. Have you ever sold any wool of any of the grades here to carpet manufacturers?

A. Of these grades here [pointing to samples]?

Q. Yes.

A. No; none of them would go to carpet manufacturers.

By Mr. SHARRETTS:

Q. You stated something about the use of the cloths for wearing apparel; you started, I believe, to state their uses. Will you now state what the other uses are?

A. Besides wearing apparel?

143 Q. Uses of clothing wool besides for wearing apparel.

A. Largely for felts, blankets, and I should say felts and blankets were the main—for clothing wool felts and blankets consume a large amount of it.

By General Appraiser MCCLELLAND:

Q. Are all these wools from Exhibit 1 to Exhibit 13 capable of being made into either worsted or woolen yarns?

A. No, sir; most of them would not be used for woolen yarns at all, because they are not suitable.

Q. Then, of course, not for worsted yarns?

A. They are all suited for worsted, but none of them, with one exception—there was one that was a good wool for woolens.

Mr. SHARRETTS. That is Exhibit 13.

Mr. LAWRENCE. Do mills, in purchasing their raw wool, ever buy the wool in mixed runs?

The WITNESS. Yes; that is sometimes done: they will buy an ungraded line of wool.

Q. Now, you have said that in the carpet industry there were both woolen and worsted yarns; that is so, isn't it?

A. Yes, sir.

Q. Now, would the worsted yarns that were made out of wool of these different grades be used at all in the carpet industry?

A. Not out of these grades of wool.

BENJAMIN F. BENNETT, appearing as a witness for the importers, having been duly sworn, testified as follows:

By Mr. STRAUSS:

Q. What is your business?

A. I am a wool buyer.

Q. And how long have you been engaged in the wool business?

A. Forty or more years.

Q. In this country?

A. Yes, sir.

Q. At wholesale?

A. Yes, sir.

Q. Have your dealings been general?

A. Yes, sir.

Q. Have you come in contact with buyers for resale and also buyers—I mean mills—the user of the raw material?

A. I have come in contact with all classes of manufacturers and merchants.

Q. Have you dealt in all kinds of wool?

A. Yes; but very little in carpet wools.

Q. But you have dealt some in carpet wools?

A. Yes.

Q. Now, in the course of your experience, have there been any broad classifications which have obtained among people experienced in wool?

A. Yes.

Q. Which divided wool into broad classes?

A. Yes.

Q. What are those broad classes?

144 Mr. LAWRENCE. I object to that as incompetent and on the ground that it calls for a commercial understanding. The provision of law under which this merchandise was classified is in express terms addressed to the common understanding, which, of course, the court must determine from the context and from such testimony as may be admissible to show the character, quality, and use of the merchandise, and I submit that the testimony of the commercial witnesses as to commercial understanding is not properly admissible. I object to it as incompetent, irrelevant, and immaterial.

General Appraiser MCCLELLAND. In order to be effective it is not the rule to require that it must be shown that the commercial under-

standing is different from the common understanding, not that the common understanding is different from the commercial.

Mr. LAWRENCE. Precisely.

General Appraiser MCCLELLAND. Is there not a presumption, to start with, that they are both the same until it is affirmatively shown that the commercial understanding is different from the common?

Mr. LAWRENCE. If they are presumed to be the same, the court must, nevertheless, determine what the common meaning is; and unless my friend is attempting to show that the commercial meaning is different, why should he be permitted to prove it?

General Appraiser MCCLELLAND. I won't allow you to do the very opposite of the well-settled rule. If there is not in the record when it is complete anything to show that this wool is commonly known as clothing wool, that will be one thing. If there is nothing to show at the end of the case that the commercial undertaking is different from common, I assume that the record may be read by whoever finally reads it as though the evidence of this man engaged in the trade is to be accepted as evidence of the common understanding, because no difference has been shown.

Mr. LAWRENCE. But as I understand, gathered from what I heard from the preceding witness, an attempt is made to show a restricted meaning of the term clothing wool, as indicated by the statement of the preceding witness, namely, that it is limited to a wool that is subjected to carding. Now, that is restricted commercial meaning.

Mr. STRAUSS. If your honor determines ultimately that the statement must be construed in the ordinary meaning of words, of course, it is a question of law, but your honor is not supposed to arrive at that conclusion—you may go to the dictionary, but you are not bound by it; you may take testimony, but you are not bound by it——

General Appraiser MCCLELLAND. The Customs Court has gone so far as to say that the common understanding may be proved. Objection overruled.

Mr. LAWRENCE. Exception.

145 (Last question read by the reporter.)

A. Fine, medium, and coarse.

Q. Now, are there any other classes which divide wools according to their suitability for use in particular industries?

A. There are.

Q. What are those classifications?

A. Clothing and combing wools.

Q. And are those classifications understood generally by all handlers and dealers in those wools, as far as your contact with them has shown you?

A. There are.

Q. Now, taking the first, the class which you have designated as clothing wools, will you in your own language describe as best you can what constitutes a clothing wool?

A. It is rather a difficult thing to answer. Each lot of wool stands by itself, and it has an individuality, and therefore to answer clearly and definitely, I would prefer to see a sample; to see the wool itself.

Q. Can you, in broad terms, tell us what clothing wools are, without attempting to demark that class entirely?

A. Well, a clothing wool in a fine wool would be shorter than it would be in a medium wool, and the clothing in the medium wool would be shorter than it would be in a coarse wool.

Q. What are clothing wools—to what process are they subjected?

A. The carding process.

Q. And to what uses are they dedicated generally? I do not mean the ultimate product, but by which class of spinner is it used?

A. Woolen spinner.

Q. Now, taking combing wools; to what class of spinners are they generally dedicated?

A. Worsteds.

Q. Now, are you familiar with the processes which each of those separate kinds of manufacturers put their raw materials through?

A. Generally, yes.

Q. What is the main distinction between the processes applied by the woolen as distinguished from the processes applied by the worsted makers?

A. Wool is used for the manufacture of woolens; the yarns are only carded and not combed, and worsted wools are both carded and combed before they are spun.

Q. Are the wools, manufacturer's raw material, namely, the wools that you have designated as clothing wool, practically capable of combing?

A. Not practically. That is, from the point of view of economy.

Q. Taking it as a commercial, economic proposition?

A. Not generally speaking.

Q. Now, you have said that the line of demarkation between the two classes, clothing and combing wools, is one difficult of
146 description?

A. Difficult of description, probably, without seeing the wool itself.

Q. Is there any difficulty with the experienced wool man telling the difference by an actual inspection of the samples?

A. I don't think so.

Q. Would you have any difficulty in determining?

A. I don't think so.

Q. Then look at the exhibits spread out back of you, and naming the number of the exhibits, tell us your conclusions into which one, namely, combing and clothing wools, each one falls?

A. Exhibit 1, I would say, is a combing wool; Exhibit 2 is a combing wool; Exhibit 3 is a combing wool; Exhibit 4 is a combing wool; Exhibit 5 is a combing wool; Exhibit 6 is a combing wool; Exhibit 7 is a combing wool; Exhibit 8 is a combing wool; Exhibit 9 is a comb-

ing wool; Exhibit 10 A is a combing wool; Exhibit 10 is a combing wool; Exhibit 11 is a combing wool; Exhibit 12 is a combing wool; and Exhibit 13 is part combing and part clothing.

Q. Mixed?

A. Mixed.

Q. But all the others, from 1 to 12, inclusive, are combing wools?

A. Yes.

Q. Would any, Exhibits 1 to 12, be classed by anyone conversant with wools as clothing wools?

Mr. LAWRENCE. I object to that.

General Appraiser MCCLELLAND. Objection sustained. A man can't tell very well what another man would do.

Q. In the classification as it is known among manufacturers and dealers and others handling wools, and according to their classification, would any, from Exhibit 1 to 12, be classed as clothing wools?

Mr. LAWRENCE. That is objected to as leading.

General Appraiser MCCLELLAND. I don't think it is objectionable on that ground. If that is the only ground, I won't allow it.

Mr. STRAUSS. I think my friend has a peculiar idea of what constitutes leading.

General Appraiser MCCLELLAND. It is improper to ask this witness for any more than his own understanding.

Mr. STRAUSS. I will withdraw the question.

Q. Basing your answer on your own experience of 40 years, as defined by you, and applying the meaning of the words "clothing wool" as you have gathered it in the course of that experience, would any wools in Exhibits 1 to 12, inclusive, be classified by you as clothing wools?

A. No.

147 Q. Now, I show you some wool here [indicating] and ask you what your conclusion is as to the classification of that wool—whether clothing or combing——

Mr. LAWRENCE. Is that in evidence?

Mr. STRAUSS. I am going to put it in evidence as an illustrative exhibit.

A. That is distinctly clothing wool.

Q. Is it a typical clothing wool? Has the exhibit typically the characteristics of clothing wool?

A. Some clothing wools have a nature——

Mr. LAWRENCE. I object to that as calling for a conclusion.

Mr. STRAUSS. I offer it in evidence.

Mr. LAWRENCE. It has not been proved to be illustrative.

General Appraiser MCCLELLAND. Objection overruled.

The sample just referred to was admitted in evidence and marked "Illustrative Exhibit C," etc.

Q. I noticed, in looking at Exhibits 1 to 13, you gave each a rather careful scrutiny. Can you tell what characteristics, broadly, you looked for to reach your conclusion whether it be a clothing or combing wool?

A. Length of staple largely.

Q. Is it length of staple solely?

A. No.

Q. What other characteristics besides length of staple do you look for in arriving at your conclusion?

A. Fineness of fiber. The coarser wools always have longer staples.

Q. But in your determination there are various factors which enter into your conclusion?

A. Yes.

Q. Now, you have given us staple, fineness, length of staple. Are there any others?

A. The character of the wool itself.

Q. What do you mean by that?

A. Some wools are mushy. Sample 13—in the staple of that, that was tender, and then there was some staples to, an inch and a half—and for that quality I would designate that sample.

Q. Is elasticity one factor?

A. Yes; that applies only to fine wools.

Q. Are those various characteristics which you have described which you looked for, such as are required by either of the two industries that you have described—the woolen manufacturers or the worsted manufacturers?

A. Yes, sir.

Q. According to the qualities you find desirable there for either one or the other of those industries you determine the classification?

A. Yes.

General Appraiser McCLELLAND. We will take a recess until 2.10 p. m.

148 AFTERNOON SESSION

BENJAMIN F. BENNETT, under examination, resumed the witness stand and continued his testimony.

By Mr. STRAUSS:

Q. Mr. Bennett, I show you Exhibit B for identification in this case, specifically calling your attention to page 311, the table headed "Wool consumption, December to March," and ask you whether that is a paper which you received regularly?

Mr. LAWRENCE. That is objected to on the ground that it is not in evidence, and that it is immaterial, irrelevant, and incompetent.

General Appraiser McCLELLAND. Objection sustained.

Mr. STRAUSS. I move now that that be admitted in evidence on the ground that they are aids. With no conclusive value to the court in arriving at its conclusion, the conclusion being a conclusion of law, there is nothing conclusive upon the court accepting the legal opinion of some other court; but the court can use as aids, authorities such as dictionaries, trade publications, Government publications, men's

testimony, rejecting or accepting so much ultimately in its conclusion as the court sees fit. It has nothing to do with the weight, but the admissibility, I maintain respectfully, it is clear.

General Appraiser McCLELLAND. What the court does, as you have suggested, is entirely outside of the question of evidence. The question is as to the competency of this paper. I have already ruled that it is incompetent as evidence, and I did say to Mr. Sharretts that if he could point to any authority that would indicate that my ruling was contrary to the rules of evidence I would be ready to reconsider my action. I have not yet been pointed to any authority that would lead me to think that I was wrong.

Mr. STRAUSS. I hope to present them later. Will you allow me an exception?

General Appraiser McCLELLAND. I shall do so.

By Mr. LAWRENCE:

Q. Mr. Bennett, what is the name of your firm?

A. Forstmann, Huffmann Co.

Q. Where is their place of business?

A. Passaic, N. J. That is where the mill is. I am a resident and have my office headquarters here in Boston.

Q. You describe yourself as a wool buyer?

A. Yes, sir; that is my present occupation.

Q. Has your experience extended beyond that of a wool buyer during the years you have been in business?

A. Yes, sir.

149 Q. In what other branches of the wool business have you been engaged?

A. I was a member of the firm of Fendro Bros. & Childs, doing an extensive wool business both in foreign and domestic wools, and also as buyer and salesmen for several Boston wool houses.

Q. Now, as a wool buyer, I take it, you also sell wool?

A. Not at the present time.

Q. How long since you have been selling wool?

A. I think it is since the first of March, 1914.

Q. But you have been continuously buying wool?

A. Yes; I have been continuously buying wool.

Q. Buying it exclusively for the firm of Forstmann-Huffmann Co.?

A. Yes, sir.

Q. They consume it?

A. Yes, sir.

Q. What is their business?

A. Woolen and worsted manufacturers.

Q. And for their purposes you buy many grades of wool?

A. Yes.

Q. Both carding wools and combing wools?

A. Yes, sir.

Q. Do you buy imported wools?

A. Yes.

Q. And of the imported wools are they both combing and carding wools?

A. Yes.

Q. Which do you handle the more of—the combing or the carding wools?

A. I personally buy more of the combing than the carding, but we use more cardings than we use combing.

Q. But you personally buy more combing—that is, of the imported wools?

A. I think this last year I bought more carding wools than combing wools, because carding wools are more in demand.

Q. At the present time?

A. Yes, sir; they were last year.

Q. That is, imported?

A. Imported and domestic.

Q. And what you have said of imported wools would apply equally to domestic wools in the last year?

A. Pardon me, applied to what I bought?

Q. Yes.

A. No; I bought more combing wools last year than I did of carding.

Q. Prior to last year what was the circumstance?

Mr. STRAUSS. I object. What materiality is it to the issue in this case as to quantities?

General Appraiser MCCLELLAND. I presume he is getting at the witness's experience with a view of applying it to his competency.

Mr. STRAUSS. I think, on the contrary, he is trying to open up on the very line that you excluded in the previous examination as to quantities intoto, imported and domestic wools bought and sold in the market.

150 Mr. LAWRENCE. If the witness is going to testify as he has indicated in regard to both combing and carding wools, I feel that I am entitled to know how much experience he has had in those two classes of wools.

General Appraiser MCCLELLAND. Yes; I think so.

Mr. STRAUSS. On that ground I think my objection is not good, but on the other ground I think it is.

General Appraiser MCCLELLAND. I can see nothing else in the question as expressed than a seeking to know what the witness's actual experience is.

Mr. STRAUSS. If that is the point I will withdraw my objection.

General Appraiser MCCLELLAND. I will allow the question for that reason.

A. Do you mean as to the amounts of each?

Q. Yes.

A. Well, it is hard for me to be practically accurate, but my opinion is that I bought a great deal more of foreign wools, because

last year we used a lot of carpet wools in the manufacture of our women's wear and sports goods, which were, naturally, clothing wools.

Q. Prior to a year ago were you buying more combing wools than you were carding wools?

A. I think so.

Q. Now, you recognize, do you not, in your trade dealings, classifications of wool by blood?

A. Yes.

Q. You spoke of fine, medium, and coarse?

A. Yes.

Q. Do those terms apply to wools which are commonly used in making clothing?

A. Why, there is a much broader classification than that.

Q. No; confine yourself to the three classes that you have identified—fine, medium, and coarse; are they all grades which are commonly used in making clothing?

A. Yes; and used in making many other fabrics as well as clothing.

Q. Are any of those three grades commonly used in making carpets?

A. No; because those that are designated strictly as carpet wools are which might come under the category of coarse wools.

Q. Now, having in mind the thirteen samples that you have examined here, would they be designated under any one or more of the three terms—fine, medium, and coarse? Are they fine, medium, and coarse?

A. They are all qualities.

Q. Are any of them fine?

A. Yes.

Q. Are any of them medium?

A. Yes.

Q. Are any of them coarse?

A. Yes.

151 Q. So that those three terms as applied to those wools, Exhibits 1 to 13, inclusive, are wools that are commonly used in making clothing?

A. Clothing and many other fabrics.

General Appraiser McCLELLAND. Are they commonly used for making clothing?

The WITNESS. Yes.

Q. Would that be common chief use?

A. I would not say the chief use.

Q. You don't know what is the chief use, is that the idea?

A. I would not qualify as testifying as to the chief use of those words. I am not a manufacturer.

Q. Is there any doubt in your mind, Mr. Bennett, that wools of the character of Exhibits 1 to 13, inclusive, are chiefly used in the manufacture of clothing?

A. Yes; there is some doubt. I know so many fabrics in which they are used that I have a serious doubt whether they would chiefly go to clothing.

Q. What other things have you in mind that wools like Exhibits 1 to 13 are devoted to?

A. They are used in automobile fabrics. I can not designate exactly, but if I had a book in front of me to classify them entirely——

Q. Mr. Bennett, you are able to suggest but one use other than clothing for this wool, namely, automobile purposes?

A. Yes.

Q. And you say there is doubt in your mind as to whether the chief use is for clothing; is that right?

A. Yes; there is a doubt in my mind as to whether the chief use is for clothing.

Q. Will you please describe the particular auto fabric for which these wools are used?

A. Worsted fabrics——

Mr. STRAUSS. I object on the ground that the witness has stated that he is not competent, and I therefore suggest that Mr. Lawrence is making him his own witness and must qualify him.

General Appraiser MCCLELLAND. The witness has stated that of his own knowledge these wools are used in the manufacture of automobile fabrics. Following that up, Mr. Lawrence asked him what automobile fabrics these wools are used in the manufacture of. I think the question is all right. Objection overruled.

A. Automobile linings for closed cars, covering of the seats, and the general lining.

Q. Does your concern manufacture those things?

A. No, sir.

Q. Do you have in mind the cloth which covers the seat and the back?

A. Yes.

Q. But you still adhere to your expression that you don't know what the chief use of such wool is?

152 A. I still adhere to my expression that there is a doubt in my mind as to whether the chief use is for clothing.

Q. But you can't tell us any other use for which you think this wool is adopted?

Mr. STRAUSS. May I object to it as a repetition? This is the third time.

General Appraiser MCCLELLAND. Objection sustained.

Q. Now, having spoken of classification by blood, I want to know if that is the usual method of grading wool, for the information of the buyer and seller?

A. It is one of the methods

Q. Well, is it the usual method? If you were buying wool to-day would you use those terms, fine, medium, and coarse, if you wanted a wool which would be represented by those terms?

A. I would differentiate the various grades in between. For instance, with the fine, there is one little lower grade, that is fine medium, so designated in the trade.

Q. Supposing you wanted to order to-day 100 bales of each one of those two grades, would you designate them in your order as fine and fine medium?

A. Yes.

Q. Is that the common method amongst buyers and sellers, of designating the wool?

A. Yes.

Q. That is a designation by blood, isn't it?

A. By blood; yes.

Q. Do you deal in any carpet wools?

A. I have bought carpet wools. It is not a wool that we use regularly.

Q. Carpet wools are commonly used in making carpets, aren't they?

A. Yes; but many of them last year were used for making clothing—men's and women's wear.

Q. That is an exceptional use for it.

A. No. Some manufacturers regularly use it.

Q. Do you mean they use a grade of wool which is commonly used for making carpets for making clothes?

A. For making cheviots.

Q. How long has that practice existed, to your knowledge?

A. In all my practice.

Q. Is that the chief use for such grades of wool?

A. No; the chief use is the manufacture of carpets.

Q. Now, carding wools is another term, isn't it?

A. Yes, sir.

Q. Which you are familiar with?

A. Yes.

Q. All wools are carded, are they not?

A. No; not all of them.

Q. What ones are not carded?

A. Well, there is a class of very long staple wools that they use instead of being carded; they are so long that the cards won't take them, and they use them for what was used formerly as preparers.

Q. Prepared for a combing?

A. Yes.

153 Q. Are there many such wools that are so used rather than carded?

A. I am not competent to say.

Q. You don't handle any such?

A. No.

Q. Then you used the term "combing" as relating to an operation to which wool is subjected, do you not?

A. Oh, yes.
Q. And you have some wools which are combed?
A. Yes.
Q. And some wools which you can not comb?
A. Yes.
Q. Some of the exhibits before you, in fact most of them, are both carded and combed, aren't they, with the exception of Exhibit 13?
A. I think that all such wools that I have testified to from samples 1 to 12 are both carded and combed.
Q. And what would you say about Exhibit 13?
A. I should say that could be used for both purposes.
Q. For both carding and combing?
A. Yes, sir.
Q. Both in making woolens and for making worsteds?
A. I should say so.
Q. Do you have occasion to buy ungraded wools?
A. Yes; sometimes.
Q. That would be wools in the fleece?
A. I buy them all in the fleece. I buy some scoured.
Q. A bale of ungraded wool would contain both carding and combing wool?
A. Some would and some not.
Q. As a matter of fact some do?
A. Some do, certainly.
Q. And that wool in the bale would be adapted for both woolens and for worsteds?
A. Yes.
Q. And practically all carding and combing wools outside of the class of carpet wools are used in the manufacture of clothing, aren't they, commonly?
A. Not carding wools.
Q. Carding are not used in the manufacture of clothing?
A. Yes.
Q. You say that all carding and combing wools outside the class of carding wools are commonly used in the manufacture of clothing?
A. Well, we used them for many other purposes.
Q. I ask you if they are not commonly used in manufacturing clothing?
A. Yes. I thought you said largely. I take that term largely to mean a large percentage.
Q. Do you deal in any alpaca?
A. Do I deal in it? I buy it.
Q. Do you buy mohair?
A. Yes. I don't buy mohair. I buy mohair noils.
Q. Do you buy camel's hair?
A. Yes; camel's hair noils, and I have bought camel's hair, too.

Q. Does your firm employ those commodities as well as wool?

A. We use them.

Q. Is this combed or carded in the process of manufacture?

154 Mr. STRAUSS. I object to that as immaterial. We are not concerned with either mohair or camel's hair.

General Appraiser MCCLELLAND. What is the materiality?

Mr. LAWRENCE. I think, your honor, it is very material. If you will look at paragraph 18 you will notice that it applies to wools "commonly known as clothing wool, including hair of the camel, Angora goat," and I think it is important to show that those are combing wools.

General Appraiser MCCLELLAND. They are not involved here, though.

Mr. LAWRENCE. No; they are not directly involved here, but the importers seek to show that clothing wool does not include combing wool; yet the expression in the tariff act includes it.

Mr. STRAUSS. You will please note that the word "including" comes after the words "commonly known as clothing," which only qualifies "wool."

General Appraiser MCCLELLAND. Whatever you might show as to camel's hair, Angora goat, and alpaca, how would it affect the issue here.

Mr. LAWRENCE. As indicating the intention of including combing wools. It includes those articles in the class of clothing wools.

Mr. STRAUSS. It would not include it as wools at all, according to the words of the statute.

General Appraiser MCCLELLAND. It would not be included at all, if it was not for their adaptability for certain uses.

Mr. STRAUSS. It says, "wool commonly known as clothing," which qualifies the words before it, and not those behind it.

General Appraiser MCCLELLAND. These are included because the language is, "wool commonly known as clothing wool, including hair of the camel, Angora goat, and alpaca." I will overrule the objection.

Mr. LAWRENCE. Exception.

(Last question read by the reporter.)

A. From my own knowledge, I don't know.

Q. You don't know whether combed or not?

A. I know that camel's hair is combed and divided into top and noil, and that the cashmere is also.

Q. That the cashmere is also combed?

A. Yes, sir.

Mr. STRAUSS. I move to strike out "cashmere" on the ground that cashmere is not included in the language of the statute.

General Appraiser MCCLELLAND. Motion granted.

Q. How about mohair?

A. Yes.

155 Q. That is combed?

A. Yes.

Q. Is alpaca combed?

A. I don't know.

Q. How do you happen to know so much more about processing in the preparation of wool than of alpaca?

A. Because I have dealt very little in the mohair and the camel's hair in comparison to what I have in wool.

Q. Well, by the way; when you examine given samples, are you able to tell from an inspection of them whether adapted for combing or not?

A. Yes.

Q. How do you determine whether a given product is adapted for combing?

A. From its length of staple and various qualities, and its soundness of staple.

Q. Applying those tests to alpaca, what would be your judgment?

Mr. STRAUSS. I object to that. It has not been shown that alpaca is subjected by experts to the same test.

General Appraiser MCCLELLAND. On the witness's own statement, Mr. Lawrence, of his experience with alpaca, I doubt whether he would be competent to answer.

The WITNESS. I have not had any experience with alpaca.

Mr. LAWRENCE. I am asking Mr. Bennett to apply the tests which he commonly resorts to to determine whether wool fibers are adapted to combing. I asked him to apply those tests to the examination of alpaca on order and express an opinion whether it is, in his judgment, adapted for combing.

Mr. STRAUSS. Yet it has not been shown that in the purchase of alpaca those are the tests that are applied to alpaca. They may be applied to alpaca, but nothing has been shown that those are the tests.

General Appraiser MCCLELLAND. I don't think it has appeared that the witness would be competent to say what the effect of those tests on alpaca would be, or whether they would stand those tests. Before I rule, Mr. Witness, just tell me whether on your experience, your experience has been such that you could tell what the effect of those tests would be on alpaca, or whether they might be applied.

WITNESS. No: I have had no experience in alpaca: if the question asked me included alpaca, if so it was an inadvertence.

Q. I have referred to alpaca, mohair, and camel's hair.

A. Alpaca——

General Appraiser MCCLELLAND. He is proceeding to explain as to camel's hair and mohair.

A. But as to alpaca, I have not had the experience.

Mr. LAWRENCE. I think that is clear on the record.

156 Q. In classifying wool, mohair, and camel's hair, you make grades according to the length of staple and fiber generally, do you?

A. Well I have never been called upon. The peculiar product that I have bought largely, I might say almost exclusively, has been the noil.

Q. That is of what?
A. Of mohair and of camel's hair.
Q. The noil is the product of the combing process, isn't it?
A. Yes.
Q. In buying wool you have to determine whether it is properly graded, don't you, by the person who sells it to you?
A. Properly graded for our purpose.
Q. How do you determine it is proper grade, by what test?
A. By the length of staple and the fineness of the fiber.
Q. I don't know whether you now recall distinctly Exhibits 7, 8, and 9——
A. No, I don't recall them.
Q. (Continuing.) Sufficiently to answer me whether they are merino combing wool?
A. I would only answer that by looking at them.
Q. Will you kindly do so—Exhibits 7, 8, and 9?
Mr. STRAUSS. Be sure you get the right ones, Mr. Bennett.
The WITNESS. Yes.
(Witness examines exhibits referred to.)
A. Yes, sir; those are merino combings.
Q. Are they pure-breed merinos?
A. It would be hard to tell. What I would call pure breed somebody else would call——
Q. Do you know de-laine as applied to wools?
A. I do.
Q. What is the significance of that term?
A. The significance of it is that it is a long staple combing merino wool or high half-blood wool.
Q. Is it a domestic or foreign wool?
A. It is largely applied to domestic, produced in such States as western Pennsylvania, West Virginia, Ohio, Michigan, and Illinois.
Q. Where do you draw the dividing line between combing wool and the carding wool?
A. By the examination of the wool itself.
Q. Now tell me what characteristics you would look for to determine whether a given wool were a combing or a carding wool?
A. The length and soundness of the staple.
Q. Are those the main things?
A. The main things to determine that.
Q. What length of staple is necessary to adapt the wool for combing?
A. That differs according to the different grades of wool.
157 Q. Well, take merino, for instance, what would be the minimum length of staple adapted for combing?
A. From my standard it would be 2½ inches, buying for our mills.
Q. Do you know if, as a matter of fact, the French system cards will comb merino an inch and a half long?
A. Yes; it will comb it.

Q. Will it comb merino less than an inch and a half long?

A. I am not competent to say.

Q. Has the distinction which you have expressed about combing and carding wools always been the same; that is, depending upon the length of fiber and the soundness?

A. Yes.

Q. Then it is true, is it not, that wools which at one time were solely carding wools are now combing wools?

A. Yes; with the improvement of machinery.

Q. So that the distinction between carding and combing has not been constant during your experience?

A. It has varied, during my experience; yes.

Q. And it varies as machinery is adapted to conditions?

A. As machinery has improved.

Q. Do you know if, in the class of carpet wools there are some carding and some combing wools?

A. I do not that there are.

Q. Have you had any experience in the manufacture of yarns, either woolen or worsted?

A. I have not.

Q. That manufacture the fabrics?

A. I have not.

Q. Just another question. Referring again to the term "delaine"; is that a technical trade term?

A. In what sense do you mean by technical?

Q. I mean, it is a term which is used in the trade to identify a certain specific grade of wool?

A. Yes.

Q. And has it been in existence for many years?

Mr. STRAUSS. I object to the last question as being immaterial. De-laine is not used in the statutes. It has not been referred to on direct examination.

Mr. LAWRENCE. Combing is not used in the statutes, and carding is not used in the statutes.

General Appraiser MCCLELLAND. He has already stated it without objection. There can't be any objection to stating——

The WITNESS. Yes.

By Mr. STRAUSS:

Q. In the course of your examination this morning by me, you spoke of combing wools and of clothing wools?

A. Yes.

158 Q. In the course of your cross-examination by my friend, he carefully led you into speaking of questions of combing and carding wools. What is the difference between a carding wool and a clothing wool?

A. Not any.

Q. Are they alternative names for the same things?

A. Yes, sir.

Q. My friend asked you further, on cross-examination, as to the designation in the trade by blood, and you, I believe, stated that it was a method of trade designation?

A. Yes.

Q. Is that a narrower designation or classification within the classification by combing and clothing wools?

Mr. LAWRENCE. That is objected to on the ground that it calls for a conclusion of the witness.

General Appraiser MCCLELLAND. Yes; that might become very vital; the question of whether it is narrow or broad must be determined from the facts.

Mr. STRAUSS. I will withdraw the question for the time being and put it in another way.

Q. What is the first classification that you divide wools into in determining your trade classification to which you testified?

Mr. LAWRENCE. I object, on the ground that it again calls for a conclusion as to what is the first classification.

General Appraiser MCCLELLAND. He is asking now simply what he does in his own trade.

Mr. LAWRENCE. He is asking what the trade does.

General Appraiser MCCLELLAND. No; what he does.

(Last question read by the reporter.)

General Appraiser MCCLELLAND. With the understanding, of course, that it is limited entirely to the witness's own acts. I will allow the question.

Mr. LAWRENCE. Exception.

A. That would be a difficult question to answer. It would be dependent entirely upon the kind of wool I was going to buy.

Q. Assuming, for the sake of argument, that you have before you certain wools of which you knew nothing, that you were examining it as to its availibility for your factory; what would be the first determination that you would arrive at?

A. The length of staple.

Q. For the purpose of determining whether it was a clothing or combing wool——

Mr. LAWRENCE. I object. The witness has been asked what he looked for. First, I object to it as leading and incompetent.

Q. What is the purpose of that?

159 Mr. LAWRENCE. I objected to the question about three questions ago, which is partially answered.

Mr. STRAUSS. That is too late, it seems to me, your Honor. You might as well object to the first question that I asked, and to the whole answer.

General Appraiser MCCLELLAND. I allowed the first question.

Mr. LAWRENCE. It relates back to the first question of those three.

General Appraiser MCCLELLAND. Objection sustained.

Mr. STRAUSS. I will withdraw the question.

Q. What is your purpose of determining length of staple in such an examination?

A. To determine whether the wool is suitable for purposes for which we wish to use it.

Q. And what are those purposes?

A. Those purposes, if I have an order for fine staple wool, that I must exclude all clothing wool. If I have an order for a clothing or carding wool, then I am not so particular.

Q. Now you were asked about a mixture of bales of wool, and stated that they might be adaptable for both woolens and worsteds?

A. Yes.

Q. Without separation do you mean?

A. In what way, without separating the fleeces?

Q. Without separating the different kinds of wool?

A. I have explained that a bag of original wool from the territories as put up at the shearing stations might contain fine, half blood, three-eighths, quarter blood, and some low wools in them. We do not buy them when they are mixed that way, but we have bought when they have been, say, even half blood, with a very small percentage of three-eighths. Then, of course, when they get to the mill they are assorted there, and each fleece is assorted for the grade and quality which we require.

Q. In other words, they are sorted before being used?

A. Oh, yes; certainly.

Q. You don't mean that they were used for either woolens or worsteds?

A. No.

Mr. LAWRENCE. I object to that as a leading question.

Mr. STRAUSS. You seem to be hurt a good deal.

Mr. LAWRENCE. You seem to be a little disturbed yourself.

Q. As you have defined your understanding of the difference between combing and clothing wools, based on your long experience, are the standards that you adopt to-day as they were before May 27, 1921?

A. The same to-day as they were then.

Q. Have they varied within the last five years?

A. No.

Mr. STRAUSS. That is all. No further questions.

160 HENRY T. G. DYSON, appearing as a witness for the importers, having been duly sworn, testified as follows:

By Mr. STRAUSS:

Q. Mr. Dyson, what is your business?

A. Commission wool comber.

Q. How long have you been in that business?

A. Do you mean in my established business or my experience?

Q. In that line of business.

A. Since 1873; 49 years on Saturday.

Q. What is the nature of your business which you conduct? What do you do?

A. We take wool in the fleece and sort it and scour it and card it and comb it.

Q. Do you do that on your own wool, or do you do that for a compensation?

A. I do it on commission.

Q. Is the wool yours?

A. No, sir.

Q. You do it for other people?

A. Yes, sir.

Q. Now, when you say you are a wool comber—do you also sort wools?

A. Yes, sir.

Q. For your customers?

A. Yes, sir.

Q. Dividing them according to well-understood grades and classifications?

A. Whatever the wool comes out.

Q. Accordingly as the wool turns out?

A. Yes, sir.

Q. Now please tell us whether, in the course of your performing these operations on wool delivered to you by your customers you have occasion to classify wool into different understood classifications?

A. Yes.

Mr. HOPPIN. The same objection as made to this former witness testifying as to the classification will apply to this question to this witness, as irrelevant and incompetent.

Mr. STRAUSS. On that point I would like to be heard. In the case of Mendelson v. United States, 1 United States Court of Customs Appeals, there was before the court a determination of the meaning of the words "silks boiled off." It was distinctly there held that those were not trade designations, and they said, on page 348, second paragraph, 1 Court of Customs Appeals, Mendelson v. United States at page 348, speaking of the words "silk boiled off"—the Court of Customs Appeals said: "As terms they have not found their way into the vocabulary of the mass and body of English-speaking peoples and have no popular signification. Apparently they are expressions coined by English-speaking manufacturers, converters, dyers, and printers of silk to identify textiles of silk at particular stages of their manufacture." We are putting on a man whose
161 occupation is analogous—not buyer and seller—and the court held that was the main point to enable the court to arrive at its conclusion of law.

General Appraiser MCCLELLAND. Of course, the ordinary citizen does not know anything about these terms at all.

(Last question and answer read by the reporter.)

General Appraiser MCCLELLAND. I don't recall any ruling that meets this at all.

Mr. HOFFIN. If your honor please, these protests are brought up——

General Appraiser McCLELLAND. This man is simply telling his experience in what he is required to do in order to execute an order that comes with the wool delivered to him. Isn't that it, Mr. Witness?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. I don't see where there can be any objection to that. I will let the answer stand.

Mr. HOFFIN. Exception.

Q. Are you familiar with the term "clothing wool"?

A. Yes, sir.

Q. Is that one that you have come in contact with during all of your years' experience?

A. Pretty nearly.

Q. Are you familiar with the term combing wool?

A. Yes, sir.

Q. Is that also something that you have come in contract with, too?

A. Yes, sir.

Q. Is it a part of your business, of the wools delivered to you by customers for sorting and grading, to separate wools into those two classes?

Mr. HOFFIN. The general objection as to commercial designation. I should like to again object to any evidence as to commercial designation.

Mr. STRAUSS. I am not putting this witness on as a commercial witness. He is neither buyer nor seller.

General Appraiser McCLELLAND. I think the only question here is as to the separation of these wools, or whether there is any such requirement. I don't say that this has anything to do with commercial experience, because the witness neither buys nor sells the wool so far as you know up to date. That seems to be the way that commercial understanding can be acquired. As I understand it, this gentleman runs an establishment receiving wools delivered to him for combing purposes.

Mr. STRAUSS. For other purposes, also, grading, sorting, washing.

162 General Appraiser McCLELLAND. He says that he is a comber, whatever that means technically, for the people in the wool trade, but he has not said yet that it was part of his duty to separate wools into different classes.

Mr. STRAUSS. I thought I had asked him that. If I had not, I will withdraw the last question temporarily, if I may.

Q. Is it a part of your duty to separate wools delivered to you into different classes for your customers?

A. When we get original wools, why, we grade them.

General Appraiser McCLELLAND. What are they sent to your establishment for?

The WITNESS. They are sent to put into different qualities and to comb them and make into tops.

Q. How about washing; do you wash them also?

A. We have to wash them before we comb them.

Q. Do you have to grade them before combing?

A. We have to sort them before combing.

Q. Is it a part of your regular duties to assort wools?

A. Yes, sir.

Q. Has that been true during all of your experience?

A. For the last 35 years.

Q. In the sorting of wools do you classify them into the two classes you have previously testified to, combing and clothing wools?

A. You get more or less clothing out of all the wools that you have.

Q. All original wools you are speaking of?

A. Original wools.

General Appraiser MCCLELLAND. How do you determine the difference between the two in separating them?

The WITNESS. By the length of staple.

Q. Any other factor?

A. We do not look for any other factor.

Q. How do you determine that, by a visual examination?

A. We just break the fleece apart a little and look into it, and if it is clothing wool we put it in the one pile, and if it is combing wool we put it in another pile.

Q. Is that determination acquired by experience in the handling of wools?

A. Yes, sir.

Q. What is the purpose of separating the clothing from the combing wools in this process?

A. To keep the short wool to itself and the combing wool to itself.

Q. To segregate the two kinds of wool?

A. Yes.

Q. Do they go to different users?

A. As a rule they do.

General Appraiser MCCLELLAND. Have you knowledge as to whether the wool, after you return it to the owners, is sold on your classification?

163 The WITNESS. If we have—I have no knowledge where it goes to after it is scoured and leaves my mill.

General Appraiser MCCLELLAND. Whether they rely on your classification or not?

The WITNESS. No.

Q. It is sent to you however, for that purpose among others?

A. We have to get the shorts out of it.

Q. Now do you make tops?

A. Yes, sir.

Q. When you make tops for your customers with the wools that are delivered to you, do you segregate the wools as delivered into combing and clothing?

Q. In other words, in your experience as a comber it is a practice, isn't it, for the different mills to require different sorts?

A. If they use different grades of wool.

Q. You receive different orders from different mills for different kinds of sorts, do you not?

A. It is just as I say, if they send us different kinds of wool they get different kinds of sorts.

By General Appraiser McClelland:

Q. Do you ever receive different orders for one particular kind of wool?

A. No, sir.

Q. Every requisition from a mill is the same except which kind of wool?

A. According to the spinning, number counts 64's, 58's, 60's, 54's, or 50's, or whatever there is in the wool.

By Mr. Hoppin:

Q. Therefore the spinning requirements of each individual mill would govern the sort which they call for?

A. Yes.

Q. And you would make the sort according to these spinning counts, would you not?

A. Yes.

Q. Do you sort mohair and alpaca?

A. No, sir.

Q. You do not deal in those at all?

A. No, sir.

Q. Or camel's hair?

A. No, sir.

Q. Do you know from your experience, as to whether those are combed by other combers?

Mr. Strauss. I object to that.

General Appraiser McClelland. That is not worth while. His answer can only be answered, no.

Mr. Strauss. Do you know?

The Witness. I know, sometimes.

Q. Do you know from your experience as a comber as to whether those particular—the alpaca, the mohair, etc.—are susceptible of being combed or are combed?

Mr. Strauss. I object.

General Appraiser McClelland. That only requires an answer yes or no.

Mr. Hoppin. He has qualified as an expert comber of wools.

166 General Appraiser McClelland. This question can be answered yes or no.

Mr. Strauss. Exception.

General Appraiser McClelland. Yes or no?

The Witness. Yes.

Q. That means, are they combed?

A. Sometimes they are.

Mr. STRAUSS. One minute, I object to that. It is evidently based on hearsay.

Mr. HOPPIN. He has testified, has qualified, my friend has qualified him as an expert.

Mr. STRAUSS. As a comber of wools.

Mr. HOPPIN. He is qualified to testify as to the common practice in the trade.

General Appraiser MCCLELLAND. But he has distinctly said, Mr. Hoppin, that he has had no experience with camel's hair, mohair or alpaca.

Mr. HOPPIN. He knows of his own knowledge, if your honor please, as an expert as to what has been done in the trade. He has said that he deals in combing wools.

General Appraiser MCCLELLAND. He does not deal in any wool.

Mr. HOPPIN. Well, he works on a commission, your honor.

Mr. STRAUSS. He performs certain operations for a compensation based on a commission basis.

Mr. HOPPIN. Are you conducting this examination?

Mr. STRAUSS. No; I am not conducting it, but it will not be conducted except in a proper way, subject to objections submitted to the court.

General Appraiser MCCLELLAND. One moment now.

Mr. STRAUSS. I move to strike out the answer.

General Appraiser MCCLELLAND. Objection overruled and motion denied.

Q. Mr. Dyson, in making your sorts do you make a different sort for a Bradford combing from the sort for the French combing?

A. We sometimes make the same quality, the same length for the French and Bradford.

Q. I am asking you as a general rule?

A. It depends on what we are ordered to do by the customer.

Q. So you assort according to order?

A. We assort according to order.

Q. Do you know, from your own knowledge, as to whether a different sort is ordered by the mill for the Bradford combing as in contrast to the French combing?

167 A. They use shorter wools in the French combing and French spinning than they do in the Bradford system.

Q. Now, you said that you determine the combing quality of the wools by the length of staple. What, roughly, was the combing length?

A. It would depend on what kind of comb you are going to comb it on.

Q. I will ask how about the Bradford comb?

A. As a rule it would take from 2½ up with the Bradford system.

Q. How about the French system?

A. The French comb will take almost any length. I don't mean by that it will take wool of this length [indicating about 1 foot], but the short-fiber length.

Q. Look at Illustrative Exhibit C, and I will ask you whether that is susceptible of being combed with the French comb?

A. It could be combed in the French comb, but it would be mostly noil when you got through.

By Mr. STRAUSS:

Q. When you said "almost any length" could be combed in a French comb, do you mean that almost any length could be practically combed for ordinary business use in the French comb or merely theoretically. Which do you mean?

Mr. HOPPIN. I object to that. I asked whether that was susceptible of being combed by the French comb, and I got the answer that it was.

Mr. STRAUSS. And qualified by the words, too, that you would get "mostly noils."

Mr. HOPPIN. I object.

General Appraiser MCCLELLAND. He said that almost any length could be combed.

Q. I am asking whether that is theoretical combing or practical combing for business purposes.

Mr. HOPPIN. I object.

General Appraiser MCCLELLAND. Objection overruled.

Mr. HOPPIN. Exception.

A. I don't think that any comber would want to comb that or any manufacturer would want to comb it for practical purposes.

Q. In other words, you were speaking of theoretical combing?

A. Yes, sir.

Q. It could be done?

A. Yes, sir.

General Appraiser MCCLELLAND. If anybody wanted it it could be done?

The WITNESS. Yes.

168 Q. Putting your mind back to the common, ordinary uses of the trade, could it be done?

A. No, sir.

By Mr. HOPPIN:

Q. What is the shortest length, Mr. Dyson, at which it is commercially practicable to comb?

Q. We haven't any French comb, so I can't tell you that.

Q. Could you say as to whether, under certain conditions—certain market conditions—as to price, et cetera, it would not be economically possible to comb?

Mr. STRAUSS. I object, on the ground that it is highly suppositious. The market conditions are not stated.

Mr. HOPPIN. I think so. The market conditions vary.

General Appraiser McCLELLAND. Suppose you put it this way: In conditions with which you are familiar in the wool business, would it be practical, commercially profitable, to use this wool represented by Illustrative Exhibit C?

The WITNESS. I should say no.

ARTHUR E. SNYDER, appearing as a witness for the importers, having been duly sworn, testified as follows:

Mr. SHARRETTS. If your honor please, it is agreed between Government counsel and ourselves that these samples which I am about to offer fairly represent the merchandise covered by protest 950402 of Lowe, Donald & Co., and that each individual sample of the cloth has a mark on it that identifies it on the invoice.

Mr. LAWRENCE. The Government admits that the samples offered represent the respective items referred to on the tags.

General Appraiser McCLELLAND. Bearing numbers similar to the invoice?

Mr. LAWRENCE. Yes, sir.

General Appraiser McCLELLAND. Is this to be a combined record?

Mr. LAWRENCE. There are three combined issues—some on wool, some on yarn, and some on cloth.

Mr. SHARRETTS. I offer them in evidence and ask that they be marked as Collective Exhibit No. 14.

General Appraiser McCLELLAND. Consisting of how many samples?

Mr. SHARRETTS. Consisting of 18 samples.

There being no objection, the samples referred to were admitted in evidence and marked "Collective Exhibit 14," etc.

By Mr. SHARRETTS:

Q. Mr. Snyder, what is your business?

A. Worsted-yarn salesman.

169 Q. How long have you been engaged in that business?

A. About 10 years.

Q. What is the name of your firm?

A. Percy A. Legge.

Q. And what is your position there?

A. Assistant manager, Boston office.

Q. And what do your duties consist of?

A. Selling, primarily, and office work.

Q. Selling the yarns?

A. Yes.

Q. Are you able to identify yarn as it appears in cloth?

A. Yes—well, in so far as what?

Q. Well, as to the quality and the character of the yarn?

A. Yes.

Q. And is it a part of your business to do that constantly?

A. Yes; indirectly.

Q. Will you please look at Collective Exhibit 14, the various samples of cloth there. Have these been submitted to you?

A. They have.

Q. What sort of examination of them did you make?

A. I examined them as to quality and kind of yarns used, and some of them I examined as to staple in as careful a way as could be done, taking the staples from the yarn.

Q. Did you examine them first, to determine whether they were worsted or woolen yarns?

A. Yes.

Q. Will you state which kind of yarn you found in these samples that you have examined?

Mr. LAWRENCE. I object to that until a better foundation has been laid, showing the witness's capacity to identify woven fabrics.

Mr. SHARRETTS. He has stated that is part of his business.

Mr. LAWRENCE. He has not gone into it in detail as to what means he could identify the yarn in a made-up fabric.

General Appraiser McCLELLAND. I notice that the witness did say that he made as good an examination as could be made of the yarn from the fabric. Is it any more difficult, Mr. Witness, to examine the yarn after it has been woven into the fabric than before?

The WITNESS. Why the fabric has to be pulled apart, and the process of finishing the goods sometimes changes the appearance of the cloth from the original yarn.

General Appraiser McCLELLAND. Would you be willing to say that your conclusion would be the same after examining the finished product?

The WITNESS. Substantially the same.

General Appraiser McCLELLAND. Objection overruled.

170 Mr. LAWRENCE. Exception.

A. Worsted yarns.

Q. Was that true of all the samples?

A. Yes, sir.

Q. How do you determine whether the yarn is a worsted yarn or a woolen yarn?

A. The first thing that determines it to my eye is the appearance. In analyzing it the worsted yarn is composed of long staple, of long hairs which are laid as near parallel as it is possible to lay them. Woolen yarns are composed of shorter staple hairs and not laid together with any regularity.

General Appraiser McCLELLAND. Were you able to take from these samples small pieces of yarn sufficient in length to be able to determine the length of the staple?

The WITNESS. I have examined most of those fabrics for staple and find that all of them contain hairs anywhere from 2 and 2½ inches up to 6 inches long.

Mr. SHARRETTS. If your honor please, here is a sample in the case of protest 941808, Stone and Downer, on yarns, and I understand that it is agreed that this a proper sample of the yarns on that protest.

Mr. LAWRENCE. No objection.

Mr. SHARRETTS. I offer that in evidence.

(There being no objection, the sample referred to was admitted in evidence and marked "Exhibit 15," etc.)

Q. Referring again to the sample of those cloths in 950402, did you examine them for quality or fineness?

A. Yes.

Q. What quality did you find that they were?

A. Why, they varied in the different fabrics.

Q. Have you made a memorandum of the qualities you found in each?

A. Yes.

Q. I show you this [handing paper to witness]. Is this a memorandum that you made?

A. Yes, sir.

Q. Will you state, refreshing your memory from that paper, just what the fineness was in the case of each sample?

A. Sample S 8673, I found to be 60's quality.

Q. What was the staple of that?

A. I found the hairs, the staple in that quality run as long as six inches.

Q. Now, in the case of the next number?

A. S 2309.

Q. What did you find to be the quality of fineness there?

A. That was 60—64's.

Q. How about the staple there?

A. The staple I find up to 3 inches.

Q. And the next?

A. S 2311, the same quality, 60/64's, I found the staple in
171 that up to 2¾ inches; S 9055 64/70's, quality staple up to 2½ inches; S 9071, same quality, same staple; S 9072, same grade; S 9070 and S 9073, same grade; S 9037, same grade; 9031, 9045, 9047, 9035, and 9075, those are all the same grade. I did not examine all of those for staple, but it was very evident from the fabrics that they were made out of the same character of yarn and have the same construction throughout, and as the examination indicated, they were about the same length.

Q. About what length?

A. Two and one-half inches. There are three more; S 20411, I found to be 60's quality staple up to 4 inches; S 20412, 60's quality; I did not examine that for staple, but from appearance, it is exactly the same as the other sample; S 20320, 60–64's, quality. That was very hard to determine for its staple, due to the fact that from the appearance it is quite a heavily felted piece of cloth, and in trying to pull the threads apart they broke into small pieces, so that I could not get a large end to determine, but from what I could get, I found a staple up to two inches.

Q. The sample was not large enough?

A. It is large enough, but it is very difficult to pull apart, it is so heavily felted, but from the character of the yarn and the size, it is a worsted yarn. There is no question about that. S 2321 is a 60–64's, the same kind of fabric exactly.

Mr. LAWRENCE. Do you mean the same as the last one?

The WITNESS. Yes, sir.

Q. Now I show you Exhibit 15. Have you examined that yarn?

A. Yes.

Q. What kind of yarn is that?

A. French spun worsted yarn.

Q. Did you make any further examination of it?

A. I examined it for quality. I classified it as about 70's quality.

Q. How about the staple?

A. I found the staple in that yarn running up to 3½ inches.

By Mr. LAWRENCE:

Q. Mr. Snyder, are you connected with the firm of Lowe, Donald & Co.?

A. No, sir.

Q. What is the business of Mr. Legge, with whom you are associated?

A. Wool selling agents in worsted and woolen yarns.

Q. How many years have you been in the business?

A. About ten.

Q. As a selling agent?

A. As a salesman; yes, sir.

Q. Have you had any practical experience in the mills?

A. Yes, sir.

Q. Spinning mills?

A. Not spinning mills.

172 Q. Have you had any experience in the worsted spinning mills?

A. No, sir.

Q. Woolen mills?

A. No.

Q. Have you had any mill experience?

A. Yes.

Q. What?

A. Underwear manufacturing and sweater manufacturing.

Q. In both of those commodities is wool used?

A. Yes, sir.

Q. Exclusively?

A. No, sir.

Q. As a salesman you deal in yarns and cloth both, do you?

A. No, sir.

Q. You do not handle cloth at all?

A. No, sir.

Q. You have never handled cloth?

A. No, sir.

Q. You have never manufactured cloth?

A. No, sir.

Q. And yet you undertake to tear a cloth to pieces and tell us what kind of yarn it is made from, do you?

A. Yes, sir.

Q. Do you deal in yarn?

A. Yes, sir.

Q. Such as Exhibit 15?

A. Yes, sir.

Q. Have you had any experience in the spinning of such yarn?

A. No practical experience; no, sir.

Q. When you were referring now to Exhibit 14 consisting of the samples of cloth, did you make your determination of the quality of the yarn and staple from an examination of those particular samples?

A. Yes, sir.

Q. Did you examine both warp and weft threads with the yarns?

A. Yes, sir.

Q. How wide are those samples, by the way?

A. Possibly two inches.

Q. And yet the shortest yarn which you found in those samples, according to your testimony, was 2½ inches, wasn't it?

A. Yes, sir.

Q. How can you state that with any degree of accuracy when the width of sample is less than 2½ inches?

A. Because I examined the two yarns in the warp and weft end of the filling, as we call it, comparing the two for quality and size, and inasmuch as it was not possible to determine the length of staple in this from the warp end, I tested it from the other end. All of my tests of staple were taken from the yarn coming this way.

Q. In these samples, which yarn run the long way of the sample, the warp or the weft?

A. Which way is the long way; filling runs this way.

Q. The filling runs the longest distance in the samples?

A. Yes, sir.

Q. You examined those filling yarns, did you?

A. Yes, sir.

173 Q. And you examined such of the warp yarns as you could obtain?

A. Yes, sir.

Q. Which are less than 2 inches long?

A. Yes, sir.

Q. How do you know whether some of those warp yarns may not have been made with, say, a staple under 2 inches long, or at least 2 inches long?

A. Because I know that those yarns are worsted yarns from their appearance. I know that if they were made from staple under 2 inches, even though it might be possible to make them into a worsted

yarn, it would not be practical to weave them, because it would not have strength to run in the warp.

Q. How do you know? You say you have had no experience in the weaving of yarns?

A. No, sir; but we have sold people making this class of fabrics for so long that we know what their requirements are.

Q. These fabrics were made in England, were they not?

A. I don't know.

Q. You have never sold any yarns for use in England, have you?

A. No, sir.

Q. And you have never prepared wool for making in yarns, have you?

A. No, sir.

Q. And you have never spun yarn?

A. No, sir.

Q. Have you ever had occasion before to express an expert opinion on the length of staple in the finished fabric?

A. No.

Q. In your business have you ever had occasion to determine the length of staple in a finished fabric?

A. No; I don't know as that point has ever been brought up before.

Q. Have you often had occasion to determine the length of staple in yarn before this one?

A. What do you mean, in any court, or simply——

Q. As a practical business proposition.

A. No.

Q. You said that as to samples in Exhibit 14—S 20320 and S 20321, you experienced difficulty in determining the length of staple in those two samples because they were felted; is that right?

A. Yes.

Q. Have you any knowledge that would enable you to say one way or the other as to whether the worsteds are ever made up of worsted yarns in the warp and woolen yarns in the weft?

A. Yes, sir; there are such fabrics.

Q. And if you had such a fabric composed of a worsted yarn in the warp and a woolen yarn in the weft, would it be commonly designated as a worsted?

174 A. I think that is something that the manufacturer would determine his own policy on. It ought not to be——

Q. Do you know; have you ever had occasion to identify such a fabric?

A. No; I have never passed judgment on a fabric of that sort.

Q. Have you ever handled them or dealt in them?

A. I have handled them; I have sold yarns to make them.

Q. How were they designated, those that you saw, as worsteds?

A. Our designation in the trade is a worsted warp and wool-filled fabric. How the manufacturer calls his cloth, I don't know.

Q. Do you know whether any such fabrics go into the trade as worsteds or not?

A. I don't know positively; no, sir.

Q. In those two samples that I have just referred to, I believe you expressed the opinion that the yarns were not over 2 inches long; is that right?

A. I said that from the examination which I could make of them I found a staple up to 2 inches.

Q. How short did you find them?

A. I did not measure them for shortness. There were small parts, possibly only a quarter inch long, and in breaking it up you pulled the fabric apart.

Q. Isn't it a fact in examining the fabric of the size of those exhibits—each individual exhibit—it would be almost impossible to determine whether a substantial portion of the wool which was used to make up the article had a staple less than an inch or an inch and a half long?

Mr. SHARRITT. That is calling for a conclusion, and I object to it.

General Appraiser MCCLELLAND. That is proper cross-examination.

A. I would find it would have to be long-staple wool to make that yarn, because it is worsted yarn. This yarn could not be spun except on the worsted system. It is a two-ply yarn in this fabric of such size that it would be almost physically impossible to spin it on the woolen system.

Q. Does that apply to the weft as well as the warp?

A. Weft as well as the warp.

Q. How do you account for the fact that the staple in this fabric is in very short lengths—that is, some of it?

A. Because in determining the staple of this yarn you have got to pull out the thread which is twisted. You have then got to untwist the two ends, and then having them untwisted you pull your fibers out. In the process of manufacturing and even in the pulling
175 you are continually breaking those hairs, so that when you come to an examination of the fabric you are bound to have a lot of broken hairs in there, broken by all the various processes of manufacture.

Q. Then would it not be impossible to determine whether the short fibers are the result of breaking up long fibers rather than short fibers?

A. In the making of worsted yarn, your first operation, the short fibers are all combed out, leaving the long fibers from which worsted yarn is made.

Q. How do you know that?

A. Because it is one of the principles of yarn spinning, the combining operation.

Q. Don't you know that by the combing operation wool as short as an inch and a half may be combed?

A. You can comb all sorts of lengths; yes, sir.

Q. And worsted yarn is made from combed wool, isn't it?

A. Yes, sir.

Q. And if you use wool in the combing process which was an inch and a half long, it would probably be shorter in the finished fabric, would it not?

A. That would depend on what you comb out of it.

Q. Supposing you left in it inch an a half wools and made it into a fabric?

A. If you left inch and a half wools in the yarn you ask me to analyze the cloth made from that yarn? I should probably be able to find staple an inch and a half and also a lot of staple much shorter.

Q. Would you expect to find any staple in the finished fabric as long as the finished staple?

A. I think so; yes, sir.

Q. Did you examine the warp and weft in each and every one of these fourteen samples?

A. I don't know. I examined the warp and weft in all the distinctive types of fabrics here upon which I passed an opinion on the length and staple.

Q. But you don't remember which of those samples you did not examine fully as to warp and weft?

A. No; not by number; I do not.

Q. Do you know if worsteds, generally speaking, are a more expensive type of cloth than the woolens?

A. Yes, sir.

Q. Mr. Snyder, when you were testifying on the direct examination about the quality and length of staple in these various samples, you found 6-inch staples, 3-inch staples, 2¾-inch, 2½-inch, 2-inch, and 4 inch. Did you say that you found staples up to that length?

A. Yes.

Q. Or was that the longest length you found?

A. That was the longest length I found.

176 Q. Are you prepared to say whether the majority of the fibers in the individual samples were of that length or shorter lengths; for instance, worsted S 8673 had a staple up to 6 inches. Are you prepared to say whether the majority of the staples of the fibers were of that length or shorter?

A. No; I am not. I did not examine it for the average staple.

Q. You have merely given us the maximum length in each case of the staple that you found?

A. Yes, sir.

WILLIAM J. CHRISTIE, appearing as a witness for the importers, having been duly sworn, testified as follows:

By Mr. SHARRETTS:

Q. What is your business?

A. Wool buyer.

Q. With what concern?
A. Atlantic Mills.
Q. Where are they located?
A. Providence, R. I.
Q. What is the business of the Atlantic Mills?
A. Dress goods.
Q. They manufacture dress goods?
A. They manufacture dress goods.
Q. Do they manufacture worsted goods?
A. Worsted dress goods.
Q. Do they manufacture woolen goods?
A. No, sir.
Q. Does your company maintain mills at all that manufacture woolen goods?
A. Yes, sir.
Q. Where are they located?
A. Stottville, N. Y.
Q. Do you buy for both the woolen mills and the worsted mills?
A. Yes, sir; all grease wools, I say for Stottville and also for Atlantic.
Q. How long have you been personally in the business in connection with wools?
A. 47 years; since 1875.
Q. Have you always been connected with the mills?
A. Yes, sir.
Q. What part of that time have you been connected in the capacity of buyer?
A. About 15 years.
Q. During that time you have been buying both woolen and worsted wools?
A. Yes, sir.
Q. Are you familiar with the different grades and classes of wool?
A. Yes, sir.
Q. Is it a part of your business to identify the different grades and classes?
A. Yes, sir.
Q. And what is the distinction between the different grades and classes, the basis of distinction?
Mr. HOPPIN. The same objection as to the testimony in the previous testimony, as to testifying as to grades and classes of wool, as being immaterial, incompetent, and irrelevant.
177 General Appraiser MCCLELLAND. I do not recall any ruling of that kind. I will allow that question. I can't understand that I ruled the other way. I do not recall it. Objection overruled.
Mr. HOPPIN. Exception.
A. What do you mean as regards staple?
Q. What are the ways?
A. The trade terms.

Q. How do they actually differ in the different grades?

A. In quality of staple, long and short.

General Appraiser McCLELLAND. If you were going to tell me, that don't know anything about wools, the different kinds of wool, how would you tell me?

The WITNESS. Fine, delaines, half bloods, three-eights, quarters; all combed wools, mind you, and common.

Q. Are you familiar with the clothing wools?

A. Yes, sir.

Q. Of the same quality that exist here?

A. Yes, sir; of the same quality that exist here.

Q. What is the distinction between clothing wool and combing wool?

A. One is long staple, the combing, and the other is all short, the clothing wool.

Q. Will you look at the exhibits in this case and state what they are? [Witness examines samples.] Have you examined them all; that is, you examined Exhibits 1 to 13? What did you find them to be?

A. All combing wool, as far as I can see, excepting Exhibit 13.

Q. What did you find Exhibit 13 to be?

A. I would call that tender, and breaks in the middle; consequently it would have to go into clothing wool.

Q. Will you look at illustrative Exhibit C; what kind of wool is that?

A. Clothing wool.

Q. Mr. Christie, what is the purpose of dividing the wools into clothing wools and combing wools?

General Appraiser McCLELLAND. Is it any part of your work as a buyer to do that?

The WITNESS. You can't work a combing wool and a clothing wool together—not very well—with good results.

General Appraiser McCLELLAND. If the witness is competent to answer the question I will allow it. He has testified, as far as I heard, that he was simply a buyer of wools.

Mr. SHARRETTS. I will withdraw the question.

Q. Are you familiar with the manufacturing processes?

A. Well, yes; to a great extent.

Q. Is that necessary in buying wools, for you to be familiar with the systems of manufacture, into which wools are going?

A. No; it is not necessary.

178 Q. Is it necessary for you to know the kinds of wools that the various kinds of system of manufacture require?

A. Yes; it is.

Q. What kinds of wools does the worsted system require?

A. Long combing wools.

Q. Now, the woolen system; what do they require?

A. Short.

Q. What class would you say they come in?

A. All classes, as far as that is concerned.
Q. What class as to length of staple?
A. What do you mean for woolen?
Q. For the woolen.
A. An inch and an inch and a half.
Q. What class, with respect to the length of staple?
A. There is a number of classes. It is largely that kind of wool there [indicating]—a fine.
Q. Referring to illustrative Exhibit C, which you described as a clothing wool?
A. Yes.
Q. Is it the clothing wools that ordinarily go into the woolen system?
A. Yes.

By Mr. HOPPIN:

Q. Now, Mr. Christie, you said that the combing wool has long staples and the clothing wool is a short wool. Is there any broader significance to the term clothing wool?
A. Not that I could give.
Q. Is there any that you have any knowledge of?
A. No, sir; one is long and the other is short, distinctly known as clothing and combing.
Q. Now, from your experience as a buyer, would you say that wools are bought according to blood?
A. Would I say that they are bought according to blood?
Q. Yes.
A. They are bought according to length and strength.
Q. And does the question of blood enter into the purchase?
A. No; I don't know as it enters into the purchase, but I know when I go after something just what I want.
Q. So that in purchasing wool you purchase it according to blood, do you not, in addition to the length of staple?
A. I purchase it according to the market terms, which are, as I testified to before, fine, half, three-eighths, quarters, and common.
Q. And delaines?
A. That covers fine—delaines.
Q. And those are blood terms, are they not?
A. I don't know as they are blood terms. They call them more suitable terms. They are blood terms; yes.
Q. They are according to blood, are they not?
A. Yes.
Q. You say that these grades differ in quality and staple. What do you mean by "quality"?
A. Why, the fineness or coarseness of it.
179 Q. And by the staple; what do you mean by the "staple"?
A. By the length and shortness of it.
Q. You stated that worsteds were made from long combing wools; are there any worsteds which contain wool that can be carded and not combed?

Mr. SHARRETTS. That question is very indefinite. Any worsted that contain any part is so broad and indefinite.

Mr. HOPPIN. It is not broad at all.

General Appraiser MCCLELLAND. If the witness does not think so he will say so.

Mr. HOPPIN. He deals in worsteds as a buyer.

A. What do you mean by carded?

Q. Too short to be combed.

A. Well, they are all carded.

Q. I said carded that could not be combed—that were too short to be combed—that were carded but were too short to be combed.

Mr. SHARRETTS. Do you understand the question?

The WITNESS. I don't quite understand him. That is a little bit ambiguous to me.

Q. You are a gentleman of some long experience, some 47 years experience; you know, do you not, that certain wools are too short to be combed?

A. Yes.

Q. You admit that?

A. No; I did not admit it.

Q. Now, I ask you again if there are any of those wools which are too short to be combed contained in worsteds?

A. Contained in worsteds? They are not worsteds if they are too short to be combed.

Q. Are there any wools of a carding length not a combing length which are used as fillers for worsteds?

A. Yes; I think there is.

Q. Are there any wools used in the making of woolens which can be combed, which are of a combing length?

A. Not that I know of.

Q. It would be perfectly possible, would it not?

A. Yes; it would be perfectly possible.

Q. Now, from your experience, Mr. Christie, can you tell me if there has been any change from the length of staple which can be combed from, we will say, the time at which you started in, 47 years ago, as a buyer, up to the present time?

A. Any change?

Q. In the length of staple which can be combed, and at the time what would you say would be the length of staple which was combed?

A. Our fine delaines run about 3 or 3½ inches.

Q. Was that combed by the Bradford system?

A. Yes.

Q. At the present time what length of staple can be combed?

A. On the Bradford system?

Q. On any system of which you have knowledge.

Mr. SHARRETTS. That is objected to as to what can be done

180 Q. Well, what is done, from your knowledge of the business?

General Appraiser McCLELLAND. In a practical way.

A. About an inch and a half to two inches and a half.

Q. These combing wools are made into yarn, are they not?

A. Yes, sir.

Q. And the yarn is made into worsteds and woolens?

A. Not into woolens—into worsted yarns.

Q. I understood you to say that some combing wools could be made into woolens?

A. No; I did not.

Mr. HOPPIN. I will withdraw that.

Q. They are then made into worsteds, are they not?

A. Not into woolens—into worsted yarns.

Q. What is the purpose for which they are commonly or chiefly used?

A. Dress goods and men's wear; that takes in about all the clothing that I know of.

Q. Are the combing wools in general a higher-priced wool than the carding wools?

Mr. SHARRETTS. That is objected to as immaterial.

A. As a rule they are.

General Appraiser McCLELLAND. Objection overruled.

Q. After an examination of these exhibits, will you tell me if all of these wools in Exhibits 1 to 13 would commonly be used for clothing?

A. No, sir.

Q. They would be used for the manufacture of——

A. Of worsteds, with the exception of that one [indicating].

Mr. SHARRETTS. You did not mean to include 13 in that?

The WITNESS. I did not.

Q. Well, we will confine it from 1 to 12; they are used in the manufacture chiefly of clothing, are they not?

A. Not that I know of.

General Appraiser McCLELLAND. Are the yarns made from these so used?

WITNESS. Yes, sir.

Q. So you now say that they are?

A. Yes.

Q. These exhibits which you call combing wools are merino?

A. Some of them are and some of them are not. [Witness examines exhibits.]

Q. Pick out one.

A. Exhibit 7.

Q. That is merino clothing wool?

A. Yes.

Q. These exhibits which you call combing wool are merino?

Mr. SHARRETTS. Exhibit 7 is what?

The WITNESS. 5, 7, 8, and 9.

181 Q. Can you state, after examining the sample, which of those samples are merino combing wool?

A. I see these four are (indicating 5, 7, 8, and 9), and the othe are more or less fine, but they are not as fine as these merinos.

General Appraiser McCLELLAND. Those that you have alread enumerated?

The WITNESS. Yes, sir.

Q. None of those are commonly used for the making of carpe are they?

A. No, sir.

By Mr. SHARRETTS:

Q. Mr. Christie, you were asked with respect to any changes in t length of fiber that were susceptible to successful combing during t past 46 years, and I believe you said there had been some changes.

A. Yes, sir.

Q. Have there been any changes in the past five years?

A. I could not say just how long a time, but I know they ha Hoffman-Zieglar comb and the French combing system.

Q. Is the situation in that respect the same as it was three yea ago?

A. I think it is; I am sure it is.

By Mr. HOPPIN:

Q. I will ask you again if, after examining Exhibits 1 to 1 inclusive, you can say whether those wools are wools which a commonly used in the making of clothing?

A. For the making of clothing, what do you mean; wearing a parel?

Q. Yes.

A. Yes, sir.

Adjournment taken until 10 a. m. to-morrow.

BOSTON, MASS., *September 22, 1922.*

Before General Appraiser CHARLES P. McCLELLAND

Appearances the same as on the previous day.

DANIEL S. PRATT, a witness for the importers, was duly sworn a testified as folows:

By Mr. SHARRETTS:

Q. Mr. Pratt, what is your business?

A. Commission importer in foreign wools.

Q. How long have you been engaged in that business?

A. Twelve years.

Q. What is the name of your firm?

A. Daniel S. Pratt & Co.

Q. Where are they located?

A. 180 Summer Street, Boston.

182 Q. Will you state briefly what your personal experience h been in connection with wool?

A. In 1910 I joined my father, who had spent all of his life in the wool business. My first experience was as a salesman, and during most of that period I have been a partner in the concern. My experience in that has been following the trend of the foreign wool markets, and keeping myself posted naturally on the supply and demand as a salesman, and as for many years the practical manager of the firm. During 1917 and 1918, when the dealers were, owing to war conditions, out of the wool business, we had some experience in making woolen yarns under subcontracts for the Government. We were not the owners of a mill but engaged the entire outfit of several mills, and we supplied the stock and had the yarns made.

Q. Did you personally come in contact with that part of the business, that is the manufacturing?

A. Yes, sir; I spent a great deal of my time during that period.

Q. You speak of being familiar with the supply and demand. Do you mean in the United States or abroad?

A. Both.

Q. Have you been operating in the United States or abroad?

A. Principally abroad.

Q. How about where you were located?

A. Our office is here in Boston. Our business is entirely here with our dealers and manufacturers in the United States in wool. Principally, we have specialized in South America wool, Argentine and Uruguay wools, but we handle carpet wools from other points, and the New Zealand.

Q. Has it been a part of your business to be familiar with the various grades and classes of wools?

A. It is absolutely essential.

Q. Are you personally able to distinguish these grades and classes?

A. Yes.

Q. What are the general classes of wool?

A. The general classes of wool are fine, medium, and coarse.

Q. How are the various classes and grades distinguished? What is the basis of distinction?

A. Broadly, combing, and clothing wools.

Q. What is the basis of distinction between the clothing and combing wools?

A. A combing wool is one that has sufficient length, according to its quality to be combed for the worsted industry. Those too short are called clothing wools and are principally used in the woolen industry.

Q. Is that a distinction that is generally recognized throughout the trade that you have come in contact with?

A. According to my experience in the trade throughout the United States generally and in all foreign countries—all the wool markets of the world.

183 Q. And has that been true during the past five years?

A. The past five years and going back before my day.

Q. Will you look at these exhibits here and state in each case what that wool is?

(Witness examines samples.)

Q. (Continuing.) Mr. Pratt, have you examined these various exhibits, 1 to 13, inclusive?

A. Yes, sir.

Q. What do you find them to be?

A. Nos. 1 to 12 are combing wools.

Q. And including 12?

A. Yes, sir; and No. 13 is partly combing, but principally clothing.

Q. The wools that you described as the combing wools, what system of manufacture do they ordinarily go to?

A. Worsteds.

Q. That which you describe as the clothing, what system of manufacture do they go to?

A. Woolens.

General Appraiser McCLELLAND. When you say worsted and woolen, do you mean that they go to manufacturers who make worsteds and woolen yarns, do you?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. So that they are used for two purposes?

The WITNESS. Those two distinct purposes.

Q. Will you state briefly, Mr. Pratt, what is the distinction between the woolen system of manufacturing and the worsted system?

Mr. LAWRENCE. I don't think it has been shown that Mr. Pratt has a knowledge of the mechanical end of the woolen business.

Mr. SHARRETTS. He said that he manufactured yarns.

General Appraiser McCLELLAND. I don't think he said that he manufactured yarns. He said that he placed contracts during the war with different manufacturers for the different kinds of yarns. I don't think he claims to have ever operated a factory.

Mr. SHARRETTS. I withdraw the question.

Q. Have you had any personal experience in the actual manufacturing of yarns?

A. No actual experience in the making of worsted yarns, and I hestitate to say that I have any woolen, although for a year or more I was in and around woolen mills, superintending the manufacture of yarns which we were having spun on contract.

Q. Do you actually know the two different systems of manufacture?

A. Yes, sir.

Q. How did you gain the knowledge of the two?

A. By study, inspection, and assimilating the knowledge of my elders.

184 Q. In order to conduct the business that you have been conducting has it been necessary for you to be familiar with these two systems of manufacture?

A. Yes, sir.

Q. Now, I ask you again, what is the distinction?

Mr. LAWRENCE. I still insist that the witness has not shown sufficiently qualifications to testify.

General Appraiser MCCLELLAND. Certainly not as to worsteds. He says himself that he has had no practical experience in the manufacture of woolen yarns.

Mr. SHARRETTS. He has stated that by observation and inspection that he was familiar with it.

General Appraiser MCCLELLAND. I understand that his business requires him to know the difference between the two yarns, but I didn't understand him to say that he knows the technical processes and that he could manufacture yarns. How about that, Mr. Witness?

The WITNESS. If I had a worsted mill given to me to-day I would not presume to say that I could run it; but the process of taking a worsted wool and combining it in the top, and putting it through the subsequent operations necessary to produce yarn and cloth, I think I have a rather clear, that is to say, theoretical knowledge of the different operations.

General Appraiser MCCLELLAND. Theoretical knowledge as against practical?

The WITNESS. It is necessary for every wool man——

General Appraiser MCCLELLAND. It is a question of whether you have a theoretical knowledge or a practical knowledge.

The WITNESS. I have had no practical knowledge. I have seen the tops made but I have not made them.

General Appraiser MCCLELLAND. Objection sustained.

Q. Mr. Pratt, during the past five years have you been required by any department of the United States Government to make reports of the quantity of the different classes of wool you had on hand?

Mr. LAWRENCE. Objected to as immaterial, whether he has or not.

General Appraiser MCCLELLAND. That simply amounts to having an order from the Government for yarns.

Mr. SHARRETTS. No; I don't think so. He may have been directed by the Government to specify the different quantities.

General Appraiser MCCLELLAND. You may answer that yes or no.

A. Yes.

185 Q. What department of the Government?

Mr. LAWRENCE. I object on the same grounds.

General Appraiser MCCLELLAND. I will allow that.

Mr. LAWRENCE. Exception.

A. The Department of Agriculture.

Q. Have you in fact sent such reports to the Department of Agriculture?

Mr. LAWRENCE. I object to that on the same grounds as before.

General Appraiser MCCLELLAND. I will allow it.

Mr. LAWRENCE. Exception.

A. Yes.

Q. In such reports have you been required to distinguish the clothing wools and the combing wools?

Mr. LAWRENCE. I object on the same grounds.

General Appraiser MCCLELLAND. Objection sustained—if he had instructions from the department.

Mr. SHARRETTS. Exception. We were to be allowed to file a memorandum of authorities, as I understand.

General Appraiser MCCLELLAND. That was as to some particular offer.

Mr. SHARRETTS. It was; yes.

Mr. HOPPIN. If the importers file a memorandum, the Government would like an opportunity to reply to the memorandum.

Q. Do you know whether members of the trade were required to make these reports?

A. They were universally.

Mr. LAWRENCE. I object to that on the ground that it is not responsive and ask that the answer be stricken out.

General Appraiser MCCLELLAND. Objection sustained. Strike out the answer.

Q. Do you know?

General Appraiser MCCLELLAND. Yes or no.

A. Yes.

Q. Have they been required generally to make these reports?

Mr. LAWRENCE. Objected to on the ground that it is incompetent, irrelevant, and immaterial.

General Appraiser MCCLELLAND. That is pretty complicated. Sustained.

Q. How do you know that other members of the trade have been required to make these reports?

Mr. LAWRENCE. I object to that as immaterial.

General Appraiser MCCLELLAND. I will allow it.

Mr. LAWRENCE. Exception.

186 A. On occasions I have seen those same reports in the offices of other firms. I have had various ones comment on the reports which they were required to furnish the Government.

Q. Have you ever seen them actually insert the various figures under those different classifications?

Mr. LAWRENCE. I object to that as incompetent, irrelevant, and immaterial.

General Appraiser MCCLELLAND. These reports would not prove anything, except the parties making the reports ought to be physically present to say what they based their statements upon. You can't prove by this man the reports of other people or the truthfulness of their statements or anything of that kind. The Government should be entitled to be confronted with the men who made the reports.

Mr. SHARRETTS. Except to show the general practice, to assist the board in making a determination.

General Appraiser McCLELLAND. This is the very center of the wool business outside of Philadelphia, I think. You have got men who are physically present and ought to be competent to testify to all material facts. That is the best proof. Objection sustained.

Q. Mr. Pratt, so far as you know, are these reports you have sent in in the possession of the Government?

Mr. LAWRENCE. I object to that as incompetent and immaterial.

General Appraiser McCLELLAND. He sent them on their way to the department. [To the witness:] When you finish these reports you forward them to some department of the Government?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. Beyond that you know nothing?

The WITNESS. No, sir.

Q. Have you received reports from the Government showing the quantities of wool under these various classifications of clothing wool and combing wool?

Mr. LAWRENCE. I object to that as immaterial.

General Appraiser McCLELLAND. Yes.

Mr. SHARRETTS. If your honor please, I realize that you have ruled on it several times.

General Appraiser McCLELLAND. One exception is as good as a million.

Q. I show you this blank here. Will you state whether or not that is a blank that you made out.

General Appraiser McCLELLAND. Be careful about the way you frame your question.

Mr. LAWRENCE. I object to that as immaterial and irrelevant.

187 General Appraiser McCLELLAND. Did you ever see a blank like that before?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. Go on.

Mr. LAWRENCE. Exception.

Q. Have you filled out blanks of that kind?

A. Yes, sir.

Mr. LAWRENCE. The same objection.

General Appraiser McCLELLAND. Overruled.

Mr. LAWRENCE. Exception.

Q. Have you filled out quantities under the classification of clothing there?

Mr. LAWRENCE. The same objection.

A. Yes, sir.

Q. Under the classification of combing?

A. Yes, sir.

Mr. LAWRENCE. The same objection.

Q. As indicated on that blank?

A. Yes, sir.

Q. Have you classified them on there, in accordance with your testimony here to-day, as clothing and combing wool?

Mr. LAWRENCE. The same objection.

General Appraiser MCCLELLAND. Objection sustained.

Q. During what period were you making these reports?

Mr. LAWRENCE. The same objection.

General Appraiser MCCLELLAND. How is that material? It seems to me that you have got it in that he has been doing it for five years off and on. How is that material, one way or the other, whether he did that? You can't prove the fact in that way, other than the fact that he filled in the blank paper.

Mr. SHARRETTS. It shows the official recognition——

General Appraiser MCCLELLAND. It is incompetent proof. You have got this experienced woolman physically present. How can you strengthen their spoken testimony with anything of this sort?

Mr. SHARRETTS. The United States Government has classified wool here differently from the way in which they have in five years officially recognized.

General Appraiser MCCLELLAND. That doesn't make any difference. The collector might classify ten times wrong and classify the eleventh time right, and the fact that he classified wrong ten times would not vitiate the eleventh time. The testimony is that these so-called publications of the Agricultural Department were based upon statements that came from other people.

Mr. SHARRETTS. The quantities—not necessarily the classifications.

General Appraiser MCCLELLAND. I don't think it is competent.

188 Mr. SHARRETTS. Is it reasonable to suppose that the legislators have ignored the entire operation of the Government by using terms——

General Appraiser MCCLELLAND. I do not speculate as to what actuated the framers of the law.

Mr. SHARRETTS. No; but wouldn't the general custom and operation of a Government department indicate what their purpose was?

General Appraiser MCCLELLAND. I don't think so. One is the legislative branch of the Government and the other is purely administrative, and nobody is wise enough to know what actuates all the different branches of the Government.

Mr. SHARRETTS. I offer the paper in evidence (the paper being "A for Identification").

Mr. LAWRENCE. I object to it as incompetent.

Mr. SHARRETTS. May we have in the record, if your Honor please, a formal statement of what we wish to prove? We offer to prove that the United States Department of Agriculture, Bureau of Markets, gathers from the wool trade and the wool manufacturers of the United States statistical reports of the stocks of combing and clothing wools, of every grade, on hand and the amount sold; that said bureau sends out blanks like the yellow blank,

"Exhibit A for Identification," to over 600 dealers in mills quarterly: to ascertain the stocks of wool of each grade on hand; and blue blanks to over 500 dealers monthly; that the bureau has published weekly for over five years the results furnished by the trade in the form of the Market Reporter, of which Illustrative Exhibit "B" for Identification is a copy; that this Market Reporter is published and distributed to the trade and the public generally. It is freely quoted in the market reports and trade publications of the country, and that these reports are recognized and standard in the trade.

General Appraiser McCLELLAND. You offer to prove all of that, by whom?

Mr. SHARRETTS. By this and other witnesses, on the basis of these exhibits.

General Appraiser McCLELLAND. The only way you can make an offer on the record is after a witness has been called for the purpose of testifying to the fact: then you can offer to prove that fact by the witness. You have here a blank offering to prove a whole lot of things.

189 Mr. SHARRETTS. We have offered to prove it by the papers that have been offered. I would like——

Mr. LAWRENCE. You have started out making an offer of proof. I want to know whether you have finished making your offer?

Mr. SHARRETTS. Not yet. I have referred in this offer of proof to a blue blank form of report——

General Appraiser McCLELLAND. Is this general offer of yours to prove based upon and following the rejection of certain papers that have been denied admission into evidence?

Mr. SHARRETTS. That is correct. I would like to offer in evidence the blue form of blank referred to in this offer to prove.

General Appraiser McCLELLAND. That will be rejected, too.

Mr. SHARRETTS. I ask that it be marked "D for Identification."

Mr. LAWRENCE. I object to the offer of proof on the ground that it is an incompetent request. It has not been shown that the importer is a qualified witness to prove what he offers to prove; so far as these so-called Market Reports are concerned they are not sent to the importers, who are required to respond to the suggestions in the reports. It is merely a request. It is a request that is not honored by the trade wholly, and furthermore it is a practice which I understand has been discontinued.

General Appraiser McCLELLAND. Your statement of objection now goes to he competency of the proof?

Mr. LAWRENCE. Yes.

General Appraiser McCLELLAND. The papers offered have been excluded, but I think that the other side is entitled to the benefit of having spread upon the record a statement of what they hope to prove, in order to have the advantage of it if the decision below goes against them to the Appellate Court.

Mr. LAWRENCE. I want to say that the reports referred to, as far as my knowledge goes, are not sworn to.

General Appraiser MCCLELLAND. That is true. The court should have before it, however, information as to the exclusion of these papers, and knowledge of what the other side hopes to prove, if the other side desires to put it on the record in that way.

Q. Mr. Pratt, I show you Illustrative Exhibit "C." Will you state what kind of wool that is?

A. It is clothing wool.

Q. To which system of manufacture would that exhibit ordinarily go?

A. The woolen system.

By Mr. LAWRENCE:

Q. Mr. Pratt, what is your full name?

A. Daniel Sharp Pratt.

190 Q. What firm are you connected with?

A. Daniel S. Pratt & Co.

Q. What is your address?

A. 185 Summer Street.

Q. Summer Street, Boston?

A. Summer Street, Boston.

Q. How long have you been in business?

A. Twelve years.

Q. With this firm?

A. Yes.

Q. Prior to that, had you had any experience in the wool business?

A. Not practical.

Q. And during the 12 years you have been with the Pratt Co., you have been engaged as a commission merchant, I believe?

A. Yes.

Q. And as a commission merchant how do you transact business in wool?

A. Why, I presume you would say that I act in the capacity of a broker.

Q. You don't have possession of the wool itself at any time?

A. No; at times we have wool consigned to us by our principals in Buenos Aires, but it is their wool.

Q. And acting in the capacity of a commission merchant, have you been traveling abroad at all?

A. I have not, no.

Q. You have been located here at Boston?

A. I have been in Boston.

Q. Have you traveled at all in the United States in negotiating sales of wool?

A. Yes, sir.

Q. What part of the United States?

A. Principally the East—manufacturing parts.

Q. East of what point?
A. Buffalo and Philadelphia.
Q. Are your transactions largely with foreign wools?
A. Yes, sir.
Q. Of what grades?
A. All grades.
Q. From what countries?
A. Principally the Argentine and Uruguay.
Q. Have you dealt to any substantial extent in Australian and New Zealand wools?
A. I would not say to a substantial extent. We have an agency for New Zealand wools, in connection——
Q. But your familiarity is mainly with the South American wools then?
A. South American wools.
Q. And in placing orders for South American wools, what are the designations commonly employed?
A. Ordinarily orders are received for wools according to the trade classifications of the grades wanted.
Q. According to the trade classifications of the grades wanted?
A. Yes, sir.
Q. Now, I want to know what those grades are?
A. They are everything from fine merino to low carpets.
191 Q. Well, give me a few of those grades, please, other than carpet wools.
A. An order may be received for a merino combing wool, or a merino clothing wool, and we have received orders for a medium combing, and at times for medium clothing.
Q. Merino medium clothing?
A. Medium clothing, yes.
Q. And does that indicate that the merinos are used for both combing and carding purposes?
A. Yes.
Q. In one event the wool would be for making worsted yarns and in the other for woolen yarns, I take it?
A. Yes, sir.
Q. Are you familiar with such terms as "Modoc"?
A. No, sir.
Q. Baby combing?
A. Yes, sir.
Q. French combing?
A. Yes, sir.
Q. What are such grades used for, if you know?
A. Baby combing may be used for French combing wool and at times for clothing.
Q. What is the case as to the so-called French combing?
A. French combing wool is a wool that is used in the worsted process, combed on French combs.
Q. Exclusively?

A. No; because a good French combing, I think, can be used on a Noble or Bradford comb. I am not an expert on that, but that has always been my belief.

Q. What I mean is, so far as your knowledge goes, is the French combing used almost exclusively for combing?

A. Not necessarily.

Q. Is it not a fact that you use it exclusively for combing? What do you mean by "not necessarily"?

A. You have asked a question that is very broad. French combing wool covers a multitude of sins.

Q. Well, give us some of those sins.

A. A French combing wool may be so short that it would be barred by many in the worsted process and thrown in the woolen process where clothing wools are used.

Q. There are grades of low wools, are there not?

A. Yes, sir.

Q. Low quarter wools?

A. Yes, sir.

Q. You said, Mr. Pratt, that orders were given for medium combing or medium clothing. Did you mean that they used those specific terms, or do they use the usual terms for grading, such as fine, or medium, or low, or quarter blood, or something of that sort?

A. It all depends on who your importer is. They may use a little different expression. If you are referring now to a medium cross-bred wool, they will specify sometimes that they do not want a combing wool, that they want a short wool for carding.

Q. But is it not more common for the purchaser in his orders to designate the grade of wool that he wants by the shorter ex-
192 pression fine, or medium, or low, or quarter, or three-eighths—something like that?

A. Something like that; yes.

Q. And what enables you to determine whether a wool is of any one of those grades I have mentioned? What are the physical characteristics of the wool?

A. Its quality or fineness of fiber.

Q. Fineness of fiber, is that all?

A. Length of staple.

Q. What is there about the staple which identifies a wool as of any class?

A. By "class," please?

Q. By grade?

A. Why, each grade of wool has a characteristic length of fiber, according to its place of origin and breed.

Q. Well, then, is it mainly the length of staple and the fineness of fiber which enables one familiar with wool to identify its grade?

A. In the grade or quality; the staple has nothing to do with it.

Q. Then, how do you determine the grade if the staple has nothing to do with it?

A. The character and size of the fiber, the diameter of it.

Q. Then, if the size only, it would not matter what the length of staple was?

A. If that was the only requirement in manufacturing; no.

Q. Would the length of staple be taken into consideration in determining the difference between Exhibit "C" and Exhibit 1 before you?

A. That is primarily a matter of length of staple. They are almost two extremes of the qualities of wool.

Q. Do you know the difference between combing and carding wools?

A. Yes, sir.

Q. Does the length of staple aid you in determining that difference?

A. Yes, sir.

General Appraiser McCLELLAND. Do you mean to say that the length of staple in Exhibit 1 controls, but in Exhibit "C" it does not; is that the idea?

The WITNESS. No.

General Appraiser McCLELLAND. I want to know what you said.

The WITNESS. In comparing these two, the length of staple of this (Illustrative Exhibit "C"), which is a fine merino clothing wool, and Exhibit 1, which is a low quarter blood, cross-bred wool, the general characteristic of blood and all characteristics, such as stocks and staples, has nothing to do with it.

General Appraiser McCLELLAND. In neither one?

The WITNESS. Not as I understand his question.

General Appraiser McCLELLAND. I am asking you. My question has only to do with the length of staple. I understood you to
193 say that if the fiber was all right in Exhibit "C" the length of staple did not matter.

The WITNESS. In comparing it with Exhibit 1——

General Appraiser McCLELLAND. I understood you to say that in this Exhibit "C," if the fiber was all right, the length of staple did not matter, is that right?

The WITNESS. No, that is not right. If you were taking the fiber of this and the fiber of Exhibit 1, the first thing you would look for would not be the staple at all, but its quality. One is merino and the other is 40–44. Then if you found that they were even in quality the next thing would be to class that as clothing and the other as long combing.

General Appraiser McCLELLAND. Would you pass it as clothing on the staple?

The WITNESS. Yes, this is a clothing wool.

Q. It is true, is it not, Mr. Pratt, that the usual custom in trade transactions is to specify wool according to its blood and grade?

A. Yes.

Q. In your particular business you sell by types, do you not?

A. Yes, sir.

Q. Just what does that imply?

A. I think that is an unfair question with competitors and customers sitting in the room.

Mr. LAWRENCE. All right; I will not press it.

Q. You sell wool to the woolen mills, do you not?

A. At times; yes, sir.

Q. And do you deal in any domestic wools?

A. Only as a side issue, in a very quiet season.

Q. Do you handle wools which are used by either the woolen or the worsted mills, or by both?

Mr. SHARRETTS. That, again, I maintain is absolutely indefinite. He should confine it to one or the other.

General Appraiser MCCLELLAND. The question should be divided.

Mr. LAWRENCE. I will recast it.

Q. Are certain wools used interchangeably by woolen and worsted mills?

A. Certain wools may be.

Q. When you say "may be"——

General Appraiser MCCLELLAND. It is not whether they may be.

Q. What I want to know is, is it commercially profitable to use certain wools by both mills?

A. There is a border line of certain wools that may be used under certain conditions for combing and under others for clothing.

Q. When you say "may be," do you mean to imply that they are in fact?

A. I mean by that that the trend of the market or possibly conditions may be such that they can be used interchangeably.

Q. Such conditions have actually existed?

A. They exist at times.

196 General Appraiser MCCLELLAND. Do they exist to any appreciable extent, or is it just a sort of an emergency?

The WITNESS. An emergency.

Q. Is it an emergency when the grade known as French combing is used either way; that is, by the woolen or the worsted mills?

A. It may be.

Mr. SHARRETTS. That has the same objection; that it is a double question.

General Appraiser MCCLELLAND. No; I don't think there is any double question there. It seems that the question is entirely indefinite.

Mr. LAWRENCE. The witness understood it.

General Appraiser MCCLELLAND. Do you understand that question?

The WITNESS. Yes, sir. I don't know that it should be inferred that from putting almost an hypothetical question, that it is the general run of all business when it is not.

General Appraiser MCCLELLAND. No. I think that question is easier than that. Have you known that wool to be used by both the woolen and the worsted mills?

The WITNESS. At times; yes, sir.

Q. And the same is true of the baby combing, isn't it?

A. I believe so.

By Mr. SHARRETTS:

Q. Mr. Pratt, I understood you to state on cross-examination that in case of the quality the staple had nothing to do with it. What do you mean by "quality"?

General Appraiser MCCLELLAND. No; I don't think he said that. Did you?

Mr. SHARRETTS. First of all I will withdraw that question. What do you mean when you say "quality"?

The WITNESS. Fineness of staples.

Q. What do you mean by the "fineness"?

A. Why, I suppose really the diameter of the individual fibers.

Q. Now, is each quality of fineness divided into classes?

A. Yes.

Q. And what are those classes?

A. Combing and clothing; there is that distinction in all grades of wool unless possibly after you get to the very finest, because you must remember that in wool every step up the ladder in fineness of quality you at once draw a shorter average staple. Taking the blood in all its classes as a standard, there is about an average length of staple with each breed of sheep, wherever it is raised.
197 Sometimes depending on that— When I go above a 70 or an 80 or 90, it will be almost entire strictly clothing wool. The finer you go the shorter the hair.

Q. It is correct then that in the finest grade there would be more clothing wools than in the coarser grades?

A. That is correct.

Q. When you use the term merino, stating that there were merino clothing wools and merino combing wools, did you mean a pure blood merino?

Mr. LAWRENCE. That is objected to on the ground that it is leading.

General Appraiser MCCLELLAND. I think that he has a right to get that. Objection overruled.

A. Practically, yes; as near as may be.

Q. Well, as near as may be.

A. As near as the breed of sheep have been kept pure, but ordinarily in common knowledge I will say that when a grade of wool reaches 64 in quality it is considered to be the pure merino blood.

Q. Would there be combing wool from such an animal?

A. Certainly, and clothing wool.

Q. How would they compare in proportion between clothing and combing? Which would predominate?

A. That question becomes a matter of expert breeding, and I think you would have to get an expert breeder of sheep, although I think in my experience——

General Appraiser MCCLELLAND. Don't speculate.

A. (Continuing.) From reports of supplies of wool the world over, I should say that in the 64 quality the wools falling under the combing class are in the majority, the supply of clothing wools being not so large, because always the object of raising sheep and breeding them is for the length of staple as well as the quality of the wool. There is much more—that the more good long staple the farmer can produce the more money he makes.

Q. What do you mean by the very finest of the wool being almost entirely clothing wool?

A. When I get about a 70 or 76. I think a 76 is pretty close to strictly combing wool, to a large extent. 80 it would be difficult to find a long staple. When I get to 90 quality, it is entirely clothing. There is such a small quantity of that, though, that it is not a commercial proposition.

Q. This illustrative Exhibit "C" I believe you said was a clothing wool?

A. Yes, sir.

Q. Now, would there be combing wools of this same quality of fineness?

A. Yes; there would be some but not—in this quality the combing wool is not in a very free supply.

198 Q. How would they compare in staple to this?

A. Combing wools of that grade would be considerably under, but would fall under the French combing class, I think, entirely.

Q. So that the length of staple there would make considerable difference.

A. Owing to their scarceness a quarter or half inch might ease them into a class that could be profitably combed to a very fine wool.

General Appraiser McCLELLAND. Have you handled carpet wool to a considerable extent?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. You have sold that class of wool to the manufacturers of carpets direct?

The WITNESS. I have.

General Appraiser McCLELLAND. Have you ever sold any wool like Exhibits 1 to 12 to carpet manufacturers?

The WITNESS. No, not those, because those are New Zealand wools, but last year we sold thousands of bales of South American 40's quality.

General Appraiser McCLELLAND. Don't get away from my question. You have examined Exhibits 1 to 12?

The WITNESS. Yes, sir.

General Appraiser McCLELLAND. My question was if you have sold wools like these.

The WITNESS. Like these samples?

General Appraiser McCLELLAND. To carpet manufacturers?

The WITNESS. No, sir.

General Appraiser McCLELLAND. What are these wools principally used for—to make what kind of yarns?

The WITNESS. Worsted yarns.

General Appraiser McCLELLAND. Are you sufficiently familiar with the manufacturing business to tell me what those yarns are principally used for?

The WITNESS. A very wide variety of cloth, let's say, speaking roughtly, may be dress goods it may be used for. I don't believe that I had better go into that—dress goods, for men's wear, overcoating and other purposes.

General Appraiser McCLELLAND. I was only asking you whether you were sufficiently familiar with it to state the principal use of those yarns.

The WITNESS. No, except we have a vague knowledge of what our different large manufacturers do with the wools. We know that the American Woolen makes practically every kind of clothing that is made.

199 Q. When you said these wools are used principally for worsted, were you referring to the combing wools or both the combing wools and the clothing wools?

General Appraiser McCLELLAND. Exhibits 1 to 12 is all. I never mentioned No. 13 at all.

Mr. LAWRENCE. Mr. Pratt, about what is the count of Exhibit "C"?

The WITNESS. I should put that up in the 70's class.

Mr. LAWRENCE. Is it within your knowledge that there is much wool in the trade of 70's or higher?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. He can answer that yes or no.

The WITNESS. Not definitely.

By Mr. LAWRENCE:

Q. Do you commonly come across wool in the trade counting above 70?

A. Commonly? Why, quite occasionally; but it is a rather hard grade to secure in any quantity.

Q. Now, combing, the term "combing," as you have used it, relates to a process a mechanical process, doesn't it, by which wool is treated?

A. Yes.

Q. And carding is another term which relates to a process by which wool is prepared, doesn't it?

A. Yes.

Q. And you have sought to draw a distinction between clothing and combing?

A. Yes, sir.

Q. Supposing you had a bale of wool which was 50 per cent one and 50 per cent the other; how would you designate it, 50 per cent carding and 50 per cent clothing?

processes that makes one desirable for one system and the other for the other?

Mr. HOPPIN. I don't object to the ordinary examination, but I don't think counsel can put the answer into the witness's mouth.

General Appraiser MCCLELLAND. Objection overruled.

A. The worsted system is the advanced and approved system of manufacture of wool, and it requires a strong, healthy, sound, well-grown wool.

Q. How about length?

A. That depends on the quality of the wool. A merino wool of a fine bred sheep may be of a shorter length than these coarse bred.

202 By Mr. HOPPIN:

Q. Mr. Avery, after examining these exhibits, 1 to 13, all of that wool contained in those exhibits, would be used generally for clothing purposes, would it not?

A. It would be possible to use it; yes.

Q. From your experience do you not know that it is commonly used for clothing purposes?

Mr. SHARRETTS Objected to as extremely indefinite. What does he mean by "clothing purposes"? He can make it a little clearer.

General Appraiser MCCLELLAND. The witness testified in answer to your question that the one went to clothing purposes and the other to worsted.

MR. HOPPIN. He is an expert in this matter, and he is perfectly competent.

General Appraiser MCCLELLAND. If he is not, he stands a poor show now.

Q. Isn't it a fact, Mr. Avery, that from your experience in the wool business you can say that these wools are commonly or generally used for clothing purposes?

A. It is casting pearls before swine. It is using a valuable wool for a less valuable purpose.

Q. By that you mean—you state that Exhibits 1 to 12 are used for worsteds, for manufacture into worsteds?

A. Yes.

Q. Now, from your experience, Mr. Avery, can you state that the majority of worsteds are used for clothing purposes?

A. They are used for the manufacture of goods worn by men and women largely.

Q. And you would say as to Exhibit 13 that that would generally be used also for the same purpose?

A. It would not be used for worsted purposes, because it would be unprofitable.

Q. It would be used ultimately for wearing apparel for men and women as you state worsteds would be generally used?

A. It commonly would.

Q. As a determining fact in the examination of wool, Mr. Avery, would you not say that the diameter of the fiber would be one of the determining factors?

A. That would establish the quality of the wool.

Q. And in the examining of the wool would you not say that the diameter of the fiber was the first thing that you would look for?

A. No.

Q. That is taken into consideration, is it not?

A. It is one of the points.

Q. Would you say that it was of equal importance with the length of the staple?

A. No; I should say that the length of staple was the main point.

203 Q. But you say that the diameter of the fiber was an important element that must be taken into consideration in the examination of wool?

A. The diameter determines what the quality of the yarn is to be.

Q. You have stated that the quality of the yarn was one of the factors which must be determined, did you not?

A. Yes, that depends on what count, what size of yarn you want to produce.

Q. And therefore I again repeat, one of the determining facts is the diameter of the fiber?

A. Yes, one of them.

Mr. SHARRETTS. He has repeated that five times.

The WITNESS. Oh, I don't care.

Q. You are acquainted, Mr. Avery, with domestic wools, are you not, as well as wool imported?

A. I think I am. I was brought up on them.

Q. The wools are graded for staple, are they not, in the worsted mills?

A. No; they are bought for staple, but they are not graded in the mills as a rule, unless they buy some original fleece.

Q. Then the mills will buy ungraded wools, will they not, in a good many instances?

A. The larger worsted mills prefer to buy the wools graded, unless they buy independently. It would seem to me in this evidence the difference between grading and sorting has not been brought out, and, if you would like me to, I will explain it.

Q. I think that was brought out yesterday.

A. The grading of wool is the handling of the original fleece as it comes from the sheep. The sorting is the separation of the fleece into its different qualities. There are different qualities on every sheep. Some breeds of sheep are different from others.

Q. I think that was testified to yesterday by one of the importers' witnesses.

A. All right.

Q. Well, from your experience you can state that the mills do buy ungraded wools at times?

A. We aim to buy for our mills wools that we handle and grade at the time.

Q. I am asking you if they do not at times buy ungraded wools?

A. Not as a rule. They prefer to buy wools that have quality——

Q. I am asking you what they prefer to buy. I am asking you if they do not as a matter of fact buy ungraded wools at times?

A. They buy them at times.

Q. In general you would say that combing wools are higher priced than clothing wools?

A. Yes.

Mr. SHARRETTS. That is immaterial.

General Appraiser MCCLELLAND. It is in line with all the testimony.

204 Q. Mr. Avery, isn't it a fact that so-called carding wools are used in worsteds?

A. Not profitably.

Q. They are used, are they not?

A. They have been used, yes.

Q. And you would say, would you not, that these grades of wools at times have been used interchangeably, due to the condition of the market?

A. No.

Q. You would not say that a fine wool which was temporarily depressed in price, would not be used for some purpose for which it would not ordinarily be used?

A. Yes.

Q. Due to market conditions?

A. I would.

Q. What would you say, Mr. Avery, was the length of staple which is combed?

A. That depends on the quality of the yarn and the mill that purchases it. Some mills require a longer-staple wool. Pacific Mills, for instance, make a fine delaine light-weight goods, weighing perhaps 4 or 5 ounces to the yard, and they have got to have a very fine strong-staple wool every fiber has to be tested.

Q. And other mills would require a shorter staple?

A. Other mills would use a wool of a shorter length.

Q. Would you say that any of these grades, such as French combing or baby combing, could be used both for combing purposes and also for strictly carding purposes, such as the manufacture of—they are used interchangeably, in other words?

A. Baby combing has reference to a domestic wool. It happened to be called baby combing because that word "baby" was a code word of the mill that first used that length of wool in the market.

Q. Is that used interchangeably, Mr. Avery?

A. It can be used—you understand baby combing makes an inferior worsted yarn, and it is really a clothing wool.

Q. I am asking if it can be used interchangeably and is so used?

A. It can be.

Q. And would the same apply to the French combing?

A. The French combing is a very limited manufacture. It is a slow process, and is used more in countries like France and Germany, where labor is cheap, and they can afford to put more in the combing than in the ordinary worsted yarns.

Q. Is it used interchangeably?

A. Yes.

Q. You deal in mohair?

A. Yes.

Q. Do you also comb that?

A. We have it combed for us by combers.

Q. Do you deal in alpaca?

A. Yes.

Q. Do you know from your experience whether that is combed?

Q. Camel's hair. Do you handle camel's hair?

A. We do not handle much camel's hair; we handle more camel's hair noils.

205 Q. Do you know from your experience whether that is combed?

A. That is combed.

Q. Are all of these hairs used chiefly for clothing purposes, Mr Avery?

A. No; camel's hair in this country is used mostly for clothing, for strainers for oil; and mohair has been used very extensively in the manufacture of automobile tops, and it is also used in making linings for clothing.

Q. For clothing?

A. Used in clothing and in dresses for women, and in dust coats.

Q. How about palm-beach suits?

A. That has mohair yarn in it.

Q. How about alpaca?

A. Alpaca is not combed, I think, to any great extent in this country.

Q. I understood you to say it was combed?

A. It is combed, and it is used by one or two concerns largely in the manufacture of linings also.

Q. For wearing apparel—lining of what?

A. Lining for any fabric.

Q. Camel's hair also has a substantial use in clothing, does it not, Mr. Avery?

A. Not the hair itself.

Q. Well, noils?

A. Noils are used in various kinds of wearing apparel.

Q. Mr. Avery, if a customer comes into your store and asks for a certain grade such as quarter blood, would the diameter of the fiber not be the first thing you would look for?

A. No.

Mr. SHARRETTS. That is the seventh time.

General Appraiser McCLELLAND. I don't know of that question having been asked before.

Q. What would be the first thing you would look for?

A. We would want to know what the mill manufactured; what goods they manufactured. If they manufactured worsteds we would want to look for the cloth that they required.

Q. I didn't ask you as to whether it was combing or carding wool. I asked you the grade. When a customer comes in and asks for a certain grade—not combing or clothing—for a certain grade, such as quarter blood?

A. I think we would offer him wool according to what he required. We would know what he manufactured.

Q. What would be the thing that you would look for, or the things that you would look for?

A. If it was a worsted mill, we would look for wools that would be combed first.

Q. If he designated the grade?

A. If he designated the grade, then it would be the length of staple.

206 Q. Would you not have to consider the diameter of staple?

A. The diameter of staple determines the grade.

General Appraiser McCLELLAND. If he designated a particular grade, would you know what he wanted?

The WITNESS. Sure.

Q. By that you would try to ascertain whether it was suitable by examining the diameter of the staple?

A. We would probably know what our stock is.

General Appraiser McCLELLAND. Do you have your stock assorted by grades?

The WITNESS. They are all indicated by qualities.

Q. The purchaser would examine it, would he not, see whether it was suitable grade?

A. I can't put myself in the place of the customer.

Q. Can you tell me whether the woolen mills use wools—what length of staple they use for warps?

A. I am not a manufacturer. I think I had better stick to my sheep.

Q. I understood you to say, Mr. Avery—in fact, I know that a gentleman who has been in business as long as you have could answer a question of that kind. You have stated that you have had general experience, both as to the manufacture of woolens and worsted wools, and wools of the raw article.

General Appraiser McCLELLAND. The question is, can you tell?

A. I don't think I can. I am not a manufacturer.

Q. You have stated, Mr. Avery, that you knew all about it, when you were qualified, of the manufacture of wools and worsteds.

A. I think I know all about wool up to date.

Q. I am quite sure you do. I think you also testified that you knew about the manufacture of woolens and worsted.

A. I know what wools go into certain qualities of tops and yarns.

Q. Can you state, from your experience, as to the longest staple ordered by woolen mills for manufacturing into woolen cloth?

A. That depends on the class of goods to be made. If you mean all manufactures of wool, I presume——

Q. Yes.

A. A felt wool requires a very short staple. That would be a little long for felt [indicating Illustrative Exhibit "C"].

Q. Are there any woolens which would require a long staple—in which a long staple is used in their manufacture?

A. In the manufacture of a certain class of overcoatings that were very popular a few years ago, a long staple wool could be used and was used.

Q. And what length of staple was used?

A. Inch and a half to 2 inches, perhaps. That class of goods is not the fashion now.

207 Q. You stated that worsted mills had used wool which was of a short staple at times for filler, did you not?

A. No; I don't recall it.

Q. Is that a fact?

A. I presume it is a fact that a shorter staple wool can be used in worsted for filling than is used in the warp.

Q. I am asking you, Mr. Avery, if that is not a fact, that it is so used?

A. I am a little loath to answer questions in regard to manufacture, but it is my impression that they buy shorter staple wool for filling ends than they do for warp ends.

Q. Do you not know from your long experience that the worsted mills do buy the short staple wool for the manufacture into worsteds?

A. Not short staple.

Q. How short staple, in your experience, would you say that they would buy for filler purposes in the worsteds?

A. I don't feel competent to answer that. I am not a manufacturer.

Q. But you have sold wool, have you not, of various lengths to worsted mills?

A. Yes; but not sufficient to answer that question.

Q. From your experience with the woolen mills would you not say that some—having sold wool to the woolen mills—that some of the wool which is sold to the woolen mills for manufacturing into woolens is also sold to the worsted mills to be used in filling?

A. The wool sold to the woolen mills is something that can't be used profitably in worsted.

Q. You have not answered my question, Mr. Avery.

A. I have tried to.

Mr. SHARRETTS. I think not——

General Appraiser MCCLELLAND. That is not an answer. The question is whether any of it was sold to the worsted mills?

A. (Continuing.) It is unusual.

Q. I am asking you, Mr. Avery, if you don't know from your experience in the wool business, whether wools which are commonly manufactured into woolens, are not used at times in the manufacture of worsteds as fillers?

A. Sometimes.

General Appraiser McCLELLAND. That is an answer.

Q. Mr. Avery, in the purchase and sale of wool, blood is taken into consideration, is it not?

A. Yes.

Q. And that is a trade usage, is it not, in the buying and selling of wool, the question of blood as to grade?

Mr. SHARRETTS. Is the question of blood a trade usage? What does that mean?

Mr. HOPPIN. I withdraw the question.

Q. In buying and selling wool, is not blood a consideration?

A. The term "blood" is not always used. In fact, I think
208 it is exceptional. The meaning of blood means the race of the sheep. This is a cross between merino and the English sheep.

Q. Would you call that Exhibit 1, for instance, merino combing wool?

A. No; I should call it a cross-bred wool, namely, the English blood.

Q. Exhibit 1, would that be called low quarter blood?

A. Yes.

Q. So, in the——

A. If you want an explanation——

Q. No; we don't want an explanation. If you will just answer my question. That would be so designated in the trade, would it not, as low quarter blood?

A. Yes; it would be so designated in the trade.

Mr. HOPPIN. That is all.

By General Appraiser McCLELLAND:

Q. You used the term in speaking of these wools, "clothing purposes." That is to say that they were used for clothing purposes?

A. Manufacturing clothing.

Q. Just for my benefit will you tell me what you mean by the term "clothing purposes"?

A. Manufacture of various fabrics for wearing—underwear, woolen goods, cashmere and serges, and various kinds of goods.

Q. Now, have you gentlemen, such as you who are engaged in the business of trading in wools, a meaning of your own for that term?

A. Clothing wool?

Q. No; "clothing purposes."

A. The meaning would be wools that were unsuitable for combing—undesirable for combing.

Q. That meaning would only be known to a wool man, of course?

A. I suppose so. It is not only the quality but the healthiness of the fiber. The worsted process requires a strong, tested wool—tested by hand and then by machine.

Q. I think you also said that wool that was made into worsted yarns, was used for making various kinds of cloth; but you would not include that use within the term "clothing purposes," as you have used it?

A. I would not, no. It is not generally understood so in the wool market.

A. MAXWELL STONE, a witness for the importers, was duly sworn, and testified as follows:

By Mr. SHARRETTS:

Q. With what firm are you connected?

A. S. W. Bridges & Co. (Inc.).

Q. What is your position there?

A. Treasurer.

209 Q. What is their business?

A. We are general dealers in wool and other merchandise.

Q. And what are your duties in this business?

A. Partly financial and partly as a salesman and buyer.

Q. How long have you been—personally been in the woolen business?

A. Twenty years.

Q. Will you state briefly what your experience has been during that period?

A. I began as a sample boy, shipper, traveling salesman, and buyer.

Q. Has it been a part of your duties to be familiar with the various grades and classes of wool?

A. Yes.

Q. Are you familiar with clothing wool?

A. Yes.

Q. Are you familiar with combing wool?

A. Yes.

Q. What is the distinction between the two?

A. Between clothing and combing wool? Clothing wool is used by the woolen system of manufacture and combing wool is used by the worsted system.

Q. What is the physical difference between the two?

A. Length of staple.

Mr. LAWRENCE. We wish to make the usual objection to the introduction of commercial testimony on the question of clothing wool.

General Appraiser MCCLELLAND. Objection overruled.

Mr. LAWRENCE. Exception.

General Appraiser MCCLELLAND. In Litz v. United States it was distinctly held that all words are to be taken in their common, ordinary meaning unless the contrary is shown. That has been held in

many other cases. In this case, as in every other, if it is not shown that the expressions used by the witnesses have a meaning other than the ordinary meaning, why, the ordinary meaning will, of course, be taken.

Mr. LAWRENCE. But in this case the law expressly declares that it is the common meaning that is to be taken.

General Appraiser MCCLELLAND. That is just what I said. Unless the contrary is shown—unless the contrary is shown, that some trade expression has a meaning different from the ordinary meaning given to these words, that the ordinary meaning will prevail.

Q. Will you please look at the exhibits in this case—these samples of wool?

A. I have already examined the samples previous to opening the court.

Q. Well, what do you find these various wools to be?

A. Samples Nos. 1 to 12——

210 Mr. LAWRENCE. I thing that question is rather too indefinite. I would like to know whether he means from what country they come, how they are graded, what is the grade or type? What does he mean?

General Appraiser MCCLELLAND. I think the witness's answer will probably show the purpose of his examination.

Q. What are the grades of these various wools?

A. Samples 1 to 12 are combing wools; sample 13 is a clothing wool.

Q. How about Illustrative Exhibit "C"?

A. This is also a clothing wool.

Q. Are you familiar with the various systems of manufacture into which these wools go? Do you know into what systems they go?

A. Yes.

Q. To what system do the wools that you have described as combing wools go?

A. The worsted system.

Q. And the wools that you have described as clothing wools, to what system?

A. The woolen system.

Q. Have you during the past five years been required to make reports to any department of the Government?

A. Yes.

Mr. LAWRENCE. I ask that the answer be stricken out—I object—

General Appraiser MCCLELLAND. I think I allowed that question before. Objection overruled.

Mr. LAWRENCE. Exception.

General Appraiser MCCLELLAND. There is no use in going over that same ground, because you have the benefit of several exceptions and you have made an offer to prove.

Mr. SHARRETTS. If your honor please, I just want to show that here is another member of the trade that does the same thing. If

the Government will admit that the same replies and the same ruling will be made, of course, I won't go into it.

General Appraiser McCLELLAND. The ruling was made on the assumption that every wool man in Boston would come here and say the same thing.

Mr. LAWRENCE. I won't admit that.

General Appraiser McCLELLAND. I didn't say you did. I said that the ruling was made under the assumption that that would be the case. If it is admissible, it is admissible, whether it is one or all. The question is as to the competency of that kind of proof, and I hold that it is not competent.

Q. Mr. Stone, in designating the classes to which these samples belong, is that done in accordance with the practice in the trade which you have come in contact with during your experience?

211 Mr. LAWRENCE. I object to that on the ground that the witness has not specified these wools by classes. He said that they were grades.

Q. Well, grades.

Mr. LAWRENCE. That is objected to on the ground ——

General Appraiser McCLELLAND. He only referred to one grade of wool.

Mr. SHARRETTS. He classified them into combing and clothing wools——

Mr. LAWRENCE. Which he said were grades.

General Appraiser McCLELLAND. You can reframe your question.

Mr. SHARRETTS. Strike out the word "class" and substitute the word "grade" in that question.

A. Wools of this grade and class have been designated as combing wools in all of my experience.

Q. Referring to which sample now?

A. Wools in samples 1 to 12.

Q. And as to samples in Illustrative Exhibit "B" and Illustrative Exhibit "C"?

A. Those have been classed as clothing wools.

Q. Are wools like Exhibits 1 to 12 ever known as clothing wools?

A. No.

Mr. LAWRENCE. I object to that as leading, and ask that the answer be stricken out.

General Appraiser McCLELLAND. It certainly is. Strike out the answer. I think we had better take a recess until quarter past 1, as we are going to close at 3 o'clock, and if we are not finished then, we are going to come back Thursday.

(A recess was taken until 1.15 p. m., at which time the hearing reconvened.)

AFTERNOON SESSION

A. MAXWELL STONE, a witness for the importers, who was under examination when the recess was taken, resumed the witness stand, and continued his testimony.

By Mr. LAWRENCE:

Q. Mr. Stone, do you buy wool in large quantities?

A. Yes.

Q. Both domestic and foreign?

A. Yes; largely foreign.

Q. And do you deal both in wools which are converted into clothing as well as wools which are converted into carpets?

A. Yes.

Q. Which do you handle mostly?

A. We handle largely the wools which are used for woolens and worsteds.

Q. That is ultimately for clothing; is that right?

A. That may be ultimately for anything. It may be used for blankets, felts, wearing apparel. There are a great many different uses for wool.

212 Q. Will you answer this question: Are they largely, if not chiefly, used in the manufacture of clothing? Are they or are they not?

A. To answer that accurately I should have to see the statistics of the manufacture of wool in the United States.

General Appraiser MCCLELLAND. He didn't ask you as to the chief use.

A. I don't know. I sell it to worsted and woolen mills who manufacture it; I presume it is used in wearing apparel as well as many other things.

Q. But you have no knowledge as to what it is chiefly used for?

A. No; if I sold it to a blanket mill, I take it for granted that it is going to make blankets out of it. If I sell it to a worsted mill he may be spinning it into yarns. I might sell it to anybody else for wearing apparel or any number of uses.

Q. Can you tell me whether the wool that you sell for other than carpet wool is chiefly used in the manufacture of clothing?

Mr. SHARRETTS. That is repetition.

Mr. LAWRENCE. It is not.

A. I testified that I could not.

Q. In other words, you don't know the chief use, do you, of the wool you sell?

Mr. SHARRETTS. If your honor please, that is objected to as being indefinite—immediate use, final, use, or ultimate use.

General Appraiser MCCLELLAND. The witness can only testify as to what he knows.

A. I know the class of mill to whom I sell it, and assume that they make it into the class of goods normally made by that mill.

Q. Well, do you sell to mills which make fabrics exclusively for clothing?

A. It is presumed that they do.

Q. Do you sell to mills which make exclusively blankets?

A. So far as I know they do.

Q. To which class of mills do you sell more?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. In my particular experience we happen to handle qualities of wool which are used more by worsted manufacturers than by woolen manufacturers. On that assumption I would presume that they go into the manufacture of wearing apparel rather than blankets.

Q. But whether you sell to the worsted or the woolen mill, the wool which you sell, outside of carpet wool, is of a kind and quality which is adapted for the ultimate manufacture of clothing isn't it?

A. Yes.

213 Q. Now, there are classes of wool, are there?

A. Yes, sir.

Q. Grades of wool?

A. Yes.

Q. Qualities of wool?

A. Yes; qualities and grades being synonymous.

Q. Are there types of wool?

A. Yes.

Q. Is that word "types," as we have just used it, synonymous with grade or quality?

A. No.

Q. Now, taking the words "grades" and "qualities," what are the common grades or qualities that you are familiar with?

A. Combing and clothing.

Q. You call those qualities, do you?

A. They are divided into—you said grade and quality.

Q. You said those were synonymous terms——

A. Class and quality. Combing and clothing are separated into various grades.

Mr. LAWRENCE. I ask that the answer be stricken out. I have asked if there are certain classes. He said there were; if there were certain grades and qualities, and he said there were. I have asked him to state the grades and qualities.

Mr. SHARRETTS. The witness has proceeded to answer the question in a responsive way.

General Appraiser MCCLELLAND. Let him go ahead and answer.

A. (Continuing.) Broadly, fine, medium, and coarse.

Q. Are those grades and qualities?

A. Grades and qualities.

Q. Are those terms—"fine, medium, and coarse"—terms which you use in filling orders or in ordering wool itself?

A. I should be more specific if I were ordering.

Q. Well, do you receive orders in which these designations—fine, medium, and coarse—are employed?

A. Yes, sir; accompanied by more specific information, in that they are based on actual samples of the wool in question.

Q. If you had an order for fine wool, what would you understand by the term "fine"? What does it relate to—the blood, or staple, or what characteristics?

A. It relates to the fineness of the fiber.

Q. The fineness of the fiber. And if the order designated "medium," what would the word "medium" mean to you?

A. Midway between fine and a coarse.

Q. And how do you determine the fineness of fiber?

A. By examination.

Q. That is, by more ocular examination?

A. Yes.

Q. And the determination of those terms—"fine," "medium," and "coarse"—requires the knowledge of one experienced in that line of business, I take it?

A. Yes.

214 Q. Do you know the qualities or characteristics of wools which adapt them for either carding or combing?

A. Do I know the qualities?

Q. Yes.

A. The characteristics.

Q. You can distinguish a carding wool from a combing wool, can you?

A. Yes.

Q. What is the line of distinction?

A. The length of staple in combination with the fineness of the fiber.

Q. What is the length of staple which is used on combs?

A. There is no set limit.

Q. In other words, may the length of combing wool merge into the lengths of carding wools? Do I make that clear to you?

A. It depends on the fineness of the qualities that you are talking about.

Q. What I mean is, are there some carding wools of a length which is as long or longer than the length of certain combing wools?

A. There are some; not all.

Q. I think you said that your sales are mostly in the foreign wools of South America.

A. I didn't say South America. I said foreign wools.

Q. From what country?

A. From nearly all countries.

Q. I am speaking now of wools other than carpet wools; from what country do you get those?

A. We import from the Argentine—Montevideo; from Australia and New Zealand; occasionally from England and Turkey.

Q. From Turkey wools other than carpet wools?

A. Yes. Those are normally known as carpet wools, but occasionally we would get better.

Q. Are all of those wools from the countries you have just enumerated composed of both carding and combing wools?

A. Yes.

Q. Which preponderates?

A. In our particular business the combing wools preponderate, because we buy that description.

Q. Do you handle any merino wools?

A. Yes.

Q. Do you know the term "Mestiza"?

A. I have seen it.

Q. "Metis"?

A. I have seen that.

Q. "Metz" also?

A. I have read the customs tariff in which those words appear—in the old tariff.

Q. Are those terms used in your trade at all?

A. Not to my knowledge.

Q. "Merino" is, however?

A. Merino is.

Q. Is merino of a grade or quality which adapts it for combing?

A. There are merino wools which are suitable for combing.

Q. Are there some suitable for carding that are not suitable for combing?

A. Yes.

215 Q. Do you buy domestic wools to any extent?

A. To a fair extent.

Q. Are you familiar with the designation of domestic wools by the name of "Modoc"?

A. No.

Q. Baby combing?

A. I know the term.

Q. Have you ever seen the wool that was so designated?

A. No.

Q. Are you familiar with the term "French combing"?

A. Yes.

Q. Have you seen the wool represented by that term?

A. Yes.

Q. Is it a combing or a carding wool?

A. It is a short combing wool.

Q. Is any of it too short to be combed; that is, designated French combing?

A. If it were, it would not be designated or classed as French combing wool.

Mr. LAWRENCE. I request that the answer be stricken out.

Mr. SHARRETTS. I think that is fully responsive to the question.

General Appraiser MCCLELLAND. That is responsive. Is there any—that is the question.

Q. Is there any so-called French combing wool which is too short to be combed practically?

A. I fail to see how there can be any.

Q. Well, do you know of any?
A. No.
Q. You have examined Exhibit 13, have you not?
A. Yes, sir.
Q. How would you classify that?
A. I should call that a clothing wool.
Q. As a clothing wool?
A. Yes.
Q. Have you examined it to determine whether it contains any wool adapted for combing?
A. I found a small proportion.
Q. Do you import, or deal in alpaca?
A. No.
Q. Mohair?
A. Yes. We do not import. We deal in it.
Q. Is mohair adapted for combing?
A. The greater part of it is. It depends on the length.
Q. Some of it is combed, is it?
A. Yes.
Q. And do you know its uses—ultimate uses?
A. A great deal of it is manufactured into plushes, for the use of railway and electric cars and seats. The curtains which are used in sleepers to inclose berths after they are made up at night; automobile tops. I think shoe laces, but I am not sure of that.
Q. Did it ever occur to you that it might be used in clothing?
A. I have seen suits, but have never worn any of them.
Q. You do know it?
A. I have seen such a suit.
Q. Why didn't you mention that amongst the uses?
A. I might have, but it didn't occur to me.
Q. By the way, is there such a thing in the trade as mohair noils?
A. Yes.
216 Q. Noils are the product of combing, are they not?
A. A by-product from combing.
Q. Do you handle or deal in camel's hair?
A. To a slight extent.
Q. Do you know if it is combed?
A. I don't know it of my own knowledge. I presume so. I sell it to worsted mills.
Q. Do you know of such a thing as camel's-hair noils?
Mr. SHARRETTS. That is objected to as immaterial. We are not trying a noils case.
Mr. LAWRENCE. It is simply to show that noils is the result of the combing process and to show whether or not camel's hair is combed.
General Appraiser MCCLELLAND. What has that to do with the issue, supposing both were true?
Mr. LAWRENCE. We argue that out of order. We wanted to show that it was mentioned in paragraph 18—combing products.

General Appraiser McCLELLAND. It is not involved here. I don't see how an answer one way or the other would help determine this issue. Objection sustained.

Mr. LAWRENCE. Exception.

Q. You deal in carpet wools, I believe?

A. Yes.

Q. Do carpet wools include both carding and combing wools?

A. Yes.

By Mr. SHARRETTS:

Q. Is there any difference between carding wools and clothing wools?

A. A great difference.

Q. Between carding and clothing?

A. No.

Q. Those terms are synonymous?

A. Yes.

By Mr. LAWRENCE:

Q. Carding is a process of treating wools?

A. Carding is a process of treating wool, and is commonly known in the trade as carding or clothing wool, manufactured for the woolen system.

Q. Carding is an operation employed in the treatment of wool?

A. Yes.

Q. Combing is an operation employed in the treatment of wool, is it not?

A. Yes.

Mr. SHARRETTS. I would like to offer in evidence the record taken in protest 946637, etc., of Cordingly & Co., and the Woonsocket Boston Mills, tried in Boston, July 6, 1922, covering certain combing wools.

Mr. LAWRENCE. I object to the offer on the ground that the wool in that case has not been identified with the wool in this case; secondly, on the ground that that case was tried under duress on my part.

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General Appraiser McCLELLAND. That would not make any difference.

Mr. LAWRENCE. Then we were not prepared to try the issue. We were not permitted by the presiding General Appraiser to conclude our case. It was ordered submitted over our objection, and by reason of its incompleteness and the fact that I was compelled to try it when I was unprepared, I object to its being received in this case.

General Appraiser McCLELLAND. There is no question of pertinency to this issue as far as it goes.

Mr. SHARRETTS. I can see how it is——

Mr. LAWRENCE. As far as it goes, I suppose it is.

General Appraiser McCLELLAND. Then I will admit it.

Mr. LAWRENCE. Exception.

Mr. SHARRETTS. I asked that it be marked.

Mr. SHARRETTS. That would be another proposition. He said sel
ing wools.

Mr. HOPPIN. He has testified that he acts in an advisory capaci
in various wool pools in matters of grading, handling, and selling
wools.

General Appraiser MCCLELLAND. Have you had anything to d
with selling?

The WITNESS. Yes, sir.

Q. Have you ever had anything to do with grading and handlin
wools?

A. Yes.

Q. What do you mean by handling wools, Mr. Fawcett?

A. In this sense, I would mean both the physical operation
grading and selling as well as acting and supervising others in
doing.

Q. How many years have you been engaged in this work, M
Fawcett?

A. In the various phases of the wool industry, for 20 years.

Mr. SHARRETTS. If your honor please, that is not responsive. H
said "in this work."

Mr. HOPPIN. All right, we will go into it in detail.

220 Q. How many years have you been engaged in the gradin
of wool, Mr. Fawcett?

A. About four.

Q. How many years have you been engaged in the selling of wo

A. About 20.

Q. And in the handling of wool?

A. About 20.

Q. How is the wool collected by the various wool pools to whi
you have referred handled by you, Mr. Fawcett?

Mr. SHARRETTS. That is objected to. He has not stated what h
personally does. He said "handled." He is speaking about som
thing I don't know whether he knows anything about or not.

Q. Do you know from your own knowledge as to how the wools
these various wool pools which you have testified to are handled?

Mr. SHARRETTS. That is leading.

A. Yes.

General Appraiser MCCLELLAND. Objection overruled. It is n
leading.

Q. Will you describe how they are handled?

A. They are collected by the county wool growers' association an
shipped to concentration points as a State pool.

Q. In each State?

A. The State pools are individual pools to concentrate at concen
tration points for grading and selling.

Q. Can you state the amount of wool which is handled in the
various pools?

A. It varies; last year about——

Mr. SHARRETTS. That is objected to; that calls for yes or no.

General Appraiser McCLELLAND. Yes, can you state?

The WITNESS. Yes.

Q. Will you state the amount of wool which was handled by these various pools?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. I think it has to do—it might have a bearing upon the experience of the witness and the weight to be given to his testimony. If it appeared that they handled an insignificant quantity, what he said about his experience would not amount to much. If they handled it in large quantities, I think it goes to the weight of the evidence.

Mr. SHARRETTS. It may be absolutely hearsay evidence unless he shows where he gets his information.

General Appraiser McCLELLAND. Nothing appears yet that the witness has testified from hearsay. He has testified that he was in charge of this pool business.

Mr. SHARRETTS. Of all pools.

221 General Appraiser McCLELLAND. I assume that he is testifying from knowledge. There is nothing yet to indicate the contrary.

Mr. HOPPIN. I asked Mr. Fawcett if he knew from his own knowledge as to the amount of wool handled by the various pools of which he has personal knowledge.

General Appraiser McCLELLAND. I instruct the witness that his testimony must be based upon actual knowledge, not upon what he has heard or what somebody has told him.

The WITNESS. Based upon the weighmasters' reports.

Q. You have seen these reports?

A. Yes, sir. They are made to——

General Appraiser McCLELLAND. Just answer the question. Do not volunteer anything.

The WITNESS. Yes, sir.

Q. Have you a record of these reports, Mr. Fawcett?

A. Yes, sir.

Q. Have you seen that report?

A. Yes, sir.

Q. Can you state from your examination of the report the amount of wool that was handled by these various pools?

Mr. SHARRETTS. Yes or no.

A. Yes.

Q. Will you so state?

Mr. SHARRETTS. That is objected to. The only way that he can prove that is to produce the reports, the man who made them, just the same as has been true of the reports of the Department of Agriculture.

General Appraiser McCLELLAND. I think, Mr. Hoppin, that that objection is good. You are referring to reports that were made by others which just came to this witness. If he can show that he

verified the reports in any way and knew them to be accurate, that would be another proposition. What he gleaned from those reports that came to him would be simply hearsay.

Q. Can you produce these records, Mr. Fawcett? Can you tell from your actual experience with these wool pools as to whether you deal in large or small amounts of wool?

Mr. SHARRETTS. Yes or no.

A. Yes.

Q. Would you say from your knowledge of this business that the amount of wool handled by the State pools is large in quantity?

Mr. SHARRETTS. That is objected to. First, it is very leading; second, it is evident that his information is based upon these reports necessarily.

222 General Appraiser MCCLELLAND. Can he state from actual contact whether the quantity was large or small?

Mr. SHARRETTS. He has answered.

General Appraiser MCCLELLAND. Now, then, he can state if his answer was based upon actual contact and actual knowledge.

Mr. HOPPIN. He has acted in a general supervising capacity. This is his business, and it is his business to know what his concern is doing.

General Appraiser MCCLELLAND. Supposing that nothing came to him but these reports, and he never saw the wool at all, did not make the reports, did not supervise their making, and did not know whether they were accurate or not. It would not be competent. If he can show by actual contact with this wool as a result of supervision or any other connection with it at all that he knew the quantity of wool, that is another thing.

Q. In your business in grading wool can you state in what quantities you have graded this wool?

Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. Yes or no.

A. Yes.

Q. And in the selling and the handling of the wools have you handled large or small quantities of the wool?

Mr. SHARRETTS. That is objected to on the same ground.

General Appraiser MCCLELLAND. He says, in your selling and grading of these wools, have you handled large or small quantities?

Mr. SHARRETTS. That is leading.

General Appraiser MCCLELLAND. Oh, no; that is not leading. He did not suggest the answer. He wants to know whether he has handled large or small quantities.

Mr. SHARRETTS. Confine him to two alternatives: perhaps it may be midway.

A. Yes.

Q. That is, large quantities?

A. Yes.

Q. And does the same apply to the grading of wool?

Mr. SHARRETTS. That is objected to, as no foundation has been laid for it.

General Appraiser McCLELLAND. He has testified that he has sold and graded. The first question was that he has sold large quantities. That may be a relative term. Now, he is asking him whether the same is true of grading.

Mr. HOPPIN. Of the grading and handling of wools

Mr. SHARRETTS. That he personally has actually done.

223 General Appraiser McCLELLAND. That is all directed to him and I have instructed him that he must testify of his own knowledge, not what he gleaned from somebody else.

The WITNESS. Yes.

Q. Can you state, from your own knowledge, as to the amount of wool handled by you in the course of a year in connection with your duties of grading, selling, and handling of wools in connection with these pools—approximately?

A. Yes.

Q. And will you so state?

Mr. SHARRETTS. That is objected to on the same ground.

General Appraiser McCLELLAND. Objection overruled.

A. In the season of 1921, approximately 40,000,000.

Mr. LAWRENCE. Forty million what?

The WITNESS. Pounds.

Mr. SHARRETTS. That is objected to.

Mr. HOPPIN. I will withdraw the question.

Q. From your experience and familiarity with wools, do you know the grades and divisions of wool?

A. Yes.

Q. Now, Mr. Fawcett, in connection with this business, do you come in contact with the wool trade in general and both growers and manufacturers and purchasers and buyers of wool?

Mr. SHARRETTS. If your Honor please, that is leading.

(Last question read by the reporter.)

General Appraiser McCLELLAND. In what phase of it is it leading?

Mr. SHARRETTS. It tells the——

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. It is rather a broad group—yes.

Q. Have you, from your associations and your business experience, discussed with these parties these grades and divisions?

A. Yes.

Q. By "parties" you mean those that you have—will you explain what you mean by "parties"?

A. As relating to the former question I mean growers, dealers, manufacturers, and consumers.

Q. Can you state what divisions are commonly used amongst the parties to which you have referred in describing wool?

General Appraiser McCLELLAND. Yes or no; can you?

A. Yes.

Q. Can you state how many divisions are referred to?

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. Yes or no.

A. Yes.

Q. Will you name them?

Mr. SHARRETTS. It is hearsay.

224 Mr. HOPPIN. From his own knowledge and experience in the trade.

General Appraiser McCLELLAND. Assuming that you are not trying to prove any commercial terms, are you, in that way?

The WITNESS. Yes.

Q. Will you name them?

Mr. SHARRETTS. That is objected to.

Mr. HOPPIN. It is a matter of common knowledge, if your Honor please.

General Appraiser McCLELLAND. If it is a question of common knowledge, what is the use of this question and the probable answer? I don't know just what the purpose of your question is.

Mr. HOPPIN. This is a question of what is common knowledge or common intent, if your Honor please, and this goes to show——

General Appraiser McCLELLAND. What is troubling me is whether you can prove by this one man, common knowledge, among others, based upon what he has heard them say.

Mr. HOPPIN. He has shown from experience—other witnesses have testified here as to what is used in the trade. We are now producing a witness who is also testifying as to what is used in the trade—based upon his own experience and knowledge.

General Appraiser McCLELLAND. If he bases it upon his own experience and gives the classification, that is one thing, but as to the competency of testimony on the part of this witness as to what he heard other people say about grades and classifications of wool, I think that is a very different proposition, and it is open to objection as hearsay.

Mr. HOPPIN. I will withdraw the question.

Q. Based upon your personal experience and knowledge, will you state into what divisions wool is commonly divided?

Mr. SHARRETTS. That is objected to. He has not shown that there were such things as divisions.

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

Q. What are they?

A. Carpet wools and clothing wools.

Q. How long has that been true, to your knowledge, Mr. Fawcett—those two divisions?

A. As long as I have been actively engaged in the business.

General Appraiser McCLELLAND. You have named two periods, one a 4-year experience and the other 20. Now, which one do you refer to in your answer? What do you have in mind, the 4-year limitation or the 20?

225 The WITNESS. The 20, but you must understand that all of the 20 was not in active dealing in wool.

Q. Can you state from your personal knowledge as to whether these divisions are further divided?

A. Yes, sir.

Q. What are those further subdivisions called?

Mr. SHARRETTS. That is purely hearsay, and we object to it.

General Appraiser McCLELLAND. I do not see that that is objectionable.

A. As we make them in the pools and in the trade, they are known as delaine fine staple, fine, fine medium, half blood, three-eighths blood, quarter blood, low quarter, common blood, cots, and various grades.

Q. And in connection with what of your duties are these various subdivisions used? That is, applying to the statement that you graded, sold, and handled wools.

A. They are used as a guide to prepare these grease wools for the commercial market.

Q. Are they used for grading, selling or handling?

Mr. SHARRETTS. That is leading, and it may not be for any of them.

Mr. HOPPIN. I will withdraw it.

Q. What are the determining factors in making these grades, Mr. Fawcett?

Mr. SHARRETTS. If your Honor please, he is not qualified to answer that.

Mr. HOPPIN. Why not; he is in the grading business. He has testified that one of his duties was grading wools.

General Appraiser McCLELLAND. Objection overruled.

A. The diameter of the fiber primarily.

Q. And would you state from your experience in the buying and selling of wool that the dominant factor would be the diameter of the fiber?

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. Of course, that is leading.

Q. What is the dominant factor in the purchasing of wool, Mr. Fawcett, from your experience?

A. The diameter of the fiber.

Q. You stated, did you not, that you sold direct to the mills and also to those that dealt in wool?

A. Yes, sir.

Q. In selling direct to the mills, do you sell as graded or ungraded?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser McCLELLAND. I don't think there is anything very leading about that. He can state whether he sells to the mills graded or ungraded or both.

Q. Or both?

A. Both.

226 Q. What class of mills do you sell to, Mr. Fawcett?

A. All classes.

Q. By all classes——

General Appraiser McCLELLAND. Enumerate the classes.

A. All classes consuming clothing wools.

General Appraiser McCLELLAND. There seems to be a difference of opinion what that term means. What do the mills do?

The WITNESS. Blanket, yarns, carding, worsted mills.

Q. When you sell this wool to the mills, in what condition is the wool as to grading or sorting?

A. Usually in graded lines.

General Appraiser McCLELLAND. What does that include?

Q. Is it ever sold ungraded?

A. Yes; it includes the commercial grades previously enumerated.

Q. Now, Mr. Fawcett, will you examine Exhibits 1 to 13, inclusive, on the table there?

A. Am I to pay any attention to the numbers?

General Appraiser McCLELLAND. Not unless you find some difference in them.

(Witness examines Exhibits Nos. 1 to 13.)

Q. Mr. Fawcett, you have examined the samples, have you?

A. Yes.

Q. Have you dealt in similar wool?

A. Yes; domestic.

Q. And from your experience you can state what those wools are?

Mr. SHARRETTS. That is objected to. It is clearly leading.

General Appraiser McCLELLAND. Supposing he had said, can you, from your experience, state what those wools are?

Mr. SHARRETTS. He might have said no.

General Appraiser McCLELLAND. Answer, yes or no.

A. Yes.

Q. Can you, from your experience?

A. Yes.

Q. Now, having stated that wool is divided into two classes, can you state from your examination as to which division the wools contained in Exhibits 1 to 13 would be included?

A. Yes.

Q. What is that division?

A. Clothing wools of various grades.

General Appraiser McCLELLAND. That is, taking the samples from Exhibits 1 to 13, inclusive?

The WITNESS. Inclusive; clothing wools of various grades.

Q. And can you state from your experience, as to whether the wools, Exhibits 1 to 13, for what purpose the wools, Exhibits 1 to 13, would commonly be used?

A. Yes.

Q. What would their use be?

A. For cloth and clothing purposes commonly.

Q. Do you know a grade known as French combing?

A. Yes.

Q. Have you handled that grade?

A. Yes.

227 Q. Do you know its uses?

A. I know the uses for which we sell it.

Q. Will you state what those are?

A. For clothing purposes.

General Appraiser McCLELLAND. What do you include in that term "clothing purposes"?

The WITNESS. For the manufacture of cloths, wearing apparel.

Q. Do you include within that term what is commonly known as carpet wools?

A. No.

Q. Do you know the grade known as baby combing?

A. Yes.

Q. Have you handled that?

A. Yes.

Q. Can you state the uses to which that is put?

A. We sell that for clothing purposes.

Q. What kind of mills do you sell that to, either the grade French combing or baby combing; can you state?

A. It is sold to different mills.

Q. Can you state what processes those mills employ, whether it is a process of carding or a process of combing?

A. Yes.

Q. Will you state what processes the mills to which you sell either of those grades use?

Mr. SHARRETTS. That is objected to. The witness has not been shown to have any knowledge whatsoever.

General Appraiser McCLELLAND. I think you are carrying it beyond any stated experience.

Q. Do you know, from your own experience—do you know what processes to which you sell the grade known as baby combing or French combing is used?

A. Yes.

General Appraiser McCLELLAND. How did you acquire that knowledge?

The WITNESS. By sight; observation.

Q. Will you now state, from your observation, whether those mills—what processes the mills to which you have sold baby combing or French combing use?

Mr. SHARRETTS. That is objected to. The witness has not been qualified.

General Appraiser McCLELLAND. He said that he acquired knowledge by actual observation of the processes used in those mills. Now, if you are in doubt of the qualification as to that statement, I will give you the privilege this minute of testing the qualifications first.

A. The mills to which we have sold these grades employ both methods.

Q. By both methods, what do you mean?

A. Carding and combing, for the manufacture of cloth.

Q. Do you know what those cloths are commonly called?

228 Mr. SHARRETTS. That is objected to as immaterial. What the cloths are commonly called.

General Appraiser McCLELLAND. Do you know? I recognize the importance of counsel making every objection that is going to save their own interest, but when a man is only going to answer yes or no——

The WITNESS. Yes.

Q. Will you state what they are?

Mr. SHARRETTS. That is objected to as immaterial.

Q. From your own knowledge.

General Appraiser McCLELLAND. It has not appeared that the witness had anything to do with cloths at all. He certainly has not been qualified on that point.

Mr. HOPPIN. I will withdraw the question relative thereto.

Q. Mr. Fawcett, in your business of buying and selling wool have you come in contact with the wool trade in general?

A. Quite generally.

Q. Does that include the Boston trade?

A. Not only Boston, it includes the Boston trade, yes.

By Mr. STRAUSS:

Q. Mr. Fawcett, will you repeat, please, the name of the association with which you say you are connected?

A. The American Farm Bureau Federation.

Q. Is that a Government institution?

A. No, sir.

Q. It is a private institution, is it?

A. Yes, sir.

Q. Incorporated?

A. Yes.

Q. Under the laws of what State?

A. Illinois, I believe; I am not positive.

Q. And what is your connection with that incorporated association?

Mr. HOPPIN. He has stated quite fully.

Mr. STRAUSS. I am asking him to state it one more time for my benefit.

A. Director of wool marketing.
Q. How long have you been in that position with them?
A. About two years with the American Farm Bureau Federation.
Q. Can you give us the month and year?
A. I can not.
General Appraiser McClelland. About two years, he says. There may be some doubt as to the months, but there could not be much about the year.
Mr. Strauss. There might be.
229 Q. Can you state, please, what the purposes of that association are as stated in its articles of incorporation?
Mr. Hoppin. I object to that as immaterial and irrelevant. The purposes are not relevant here. He has testified as to what his experience is.
General Appraiser McClelland. Have you ever seen the articles of incorporation?
The Witness. Of the farm bureau organizations, many of them, but the national, no.
General Appraiser McClelland. That is the one you are talking about, is it?
Q. Which did you say you saw?
A. The farm bureau organization I have seen.
General Appraiser McClelland. Which one are you director of?
The Witness. I am not director of any. I am the director of wool marketing for the American Farm Bureau Federation.
Q. Is that what you said is the national association?
A. It is often so spoken of.
Q. You spoke of it as such?
A. I spoke of it as the American Farm Bureau Federation.
Q. Have you ever seen their articles of incorporation?
A. No, sir.
Q. Do you know the purposes of that association outside of any articles of incorporation?
A. Yes.
Q. Please state them.
Mr. Hoppin. I object. I do not see where this is pertinent to the issue at all. It is going into extraneous matters, in my mind. He has testified as to what his experience is as a handler of wool, of his experience in the wool trade.
Mr. Strauss. He is banking on the large title, American Farm Bureau Federation.
Mr. Hoppin. That has nothing to do with his qualifications as an expert.
General Appraiser McClelland. Except this, that it is not an unusual thing on cross-examination for counsel to make the effort, whether they succeed or no, to show that the witness is a good risk.
Mr. Strauss. That is not the only reason. It also goes into questions of qualification, as I shall dwell upon on cross-examination.
General Appraiser McClelland. Objection overruled.

A. It is to advance the interests of agricultural industry through the State and local farmers' organizations as mediums through which to work.

230 Q. It is the national association of which you are the head of the wool bureau?

A. No; I did not say wool bureau.

Q. Well, what do you call it?

A. Marketing director.

Q. Of which you are the wool marketing director—undertake any of the direct selling of the wool gathered at the centers?

A. As an organization, no.

Q. Does the national association—American association—undertake any of the grading of the wool gathered at the State centers?

A. As an association, no.

Q. You say you have State organizations, I believe, in 13 States?

A. You are mistaken.

Q. In how many?

A. Forty-two, I think it is.

Q. You have organizations in 42?

A. Farm bureau organizations.

Q. You market or gather together wools in all of these 42 States?

A. I did not so state.

Q. In how many of them do you gather?

A. Approximately 15.

Q. When the wool is so gathered do you personally go and inspect the total accumulation of that State in each of those 15 States?

A. In the concentration points.

Q. In all instances?

A. With two exceptions.

Q. What are those two exceptions?

A. Portland, Oreg., and Houston, Tex.

Q. Do you go to all concentration points within a State?

A. The concentration points are without the State.

Q. Are they all without the State?

A. Except the States that they are in.

Q. How many concentration points are there for all 15 States?

A. About seven.

Q. You visit all seven?

A. With the exceptions just named.

Q. That was Portland——

A. Portland and Houston.

Q. That leaves five concentration centers to which you do go?

A. Yes.

Q. Have you been going there ever since you have been director of wool marketing?

A. Yes.

Q. At what season of the year do you visit these places?

A. No particular schedule.

Q. Is wool received at these concentration centers at all seasons?
A. Not at all seasons, largely through the summer months.
Q. Do you negotiate personally the sales of any of that wool?
A. A portion of it.
Q. What portion?
A. I can't give that.

231 Q. What portion of the 40,000,000 pounds in the season of 1921, which you testified that you personally graded, as I understood, did you actually personally, physically, grade or see?
A. I saw practically every pound handled—graded very little.
Q. You saw it in bulk?
A. In bulk.
Q. How much did you actually personally weigh?
A. I couldn't weigh it—by observation. I can not estimate the number of pounds.
Q. Not even a hundred pounds?
A. No.
Q. Did you grade a hundred pounds?
A. Yes.
Q. Did you grade 200 pounds?
A. Yes.
Q. Did you grade 500?
A. Yes.
Q. A thousand?
A. Yes.
Q. Ten thousand?
A. Yes.
Q. Personally, I am asking you.
A. Yes.
Q. One hundred thousand?
A. I think not.
Q. Fifty thousand?
A. Possibly.
Q. How much of each of that quantity did you grade at each of the five centers?
A. I can not tell that.
Q. How much of the 40,000,000 pounds did you sell personally?
A. I can not give that.
Q. Did you ever hear the term "combing wool"?
A. Yes.
Q. Frequently?
A. Yes.
Q. In the trade?
A. Yes.
Q. Among users of wool?
A. Yes.
Q. Among sellers of wool?
A. Yes.

Q. Among all the various people who handle wool?
A. Who handle wool? Yes.
Q. It is not an uncommon term, combing wool, in the wool trade?
A. No.
Q. It is a recognized classification, is it not, of wool?
A. No; it is a recognized grade.
Q. You testified that there were only two grades of wool?
A. No.
Q. One was clothing and the other carpet. Do you wish to amend that statement in any way?
Mr. HOPPIN. If your honor please, the witness did not so state. He stated that it was divided into two divisions.
General Appraiser MCCLELLAND. Carpet and clothing. Those were the two.
Q. Do you wish to amend that statement in any way that you made?
Mr. HOPPIN. I object. He has already testified.
Mr. STRAUSS. Are you afraid to subject your witness to cross-examination, Mr. Hoppin?
232 General Appraiser MCCLELLAND. You used the two terms, carpet and clothing, and counsel wants to know if you want to amend your statement.
Mr. HOPPIN. He puts certain words into the mouth of the witness, which he did not state.
The WITNESS. I do not wish to amend my answer.
Q. Do you wish to amend it, when you said later on, French combing was another division?
A. Grade.
Q. Did you say division or grade?
A. I did not say division.
Q. What is the difference between division and grade, in your judgment, and in your use of words?
A. The grade, as I understand it, is a commercial commodity designated by diameter of fiber and other factors.
Q. And what does the word "division" mean, as you have used it?
A. It means the broad classification for which wools are used.
Q. Is that a divisional classification to which you personally have adopted that broad divisional classification, is that one of your adoption?
A. No.
Q. Who else has adopted that divisional classification?
A. It is common. It is generally adopted, as far as I know.
Q. Mr. Fawcett, do you know the United States Department of Agriculture publication known as "The Wool Grower," in the wool trade?
A. Yes.
Q. Is that a recognized publication in the wool industry?
A. I can't state as to that.

Q. Do you get it regularly?
A. Yes, sir.
Q. Do you study it carefully?
A. Occasionally.
Q. Frequently, isn't it?
A. Occasionally.
Q. Not frequently?
A. Yes; I will say frequently.
Q. Are you consulted for the purposes of your information, in the course of your duties?
A. Seldom.
Q. When you are, do you rely on statistics?
A. Not always.
Q. Now you have stated that the diameter of the fiber was one of the principal characteristics that you look for in wool; is that right?
A. That the buyers look for.
Q. Are the buyers the only ones that look for it?
A. The grader.
Q. Do sorters look for it?
A. We do not sort wool.
Q. Is not length of staple the first characteristic that they look for?
A. Buyers?
Q. Buyers and graders?
A. No.
Q. Is it the second characteristic that they look for?
A. It is according to the grade that they are making.
233 Q. According to the grade that they are making?
A. According to the grade that they are making.
Q. As you get your wool at the concentration centers you proceed to grade it, do you not?
A. The majority of it.
Q. Such as you do grade, what does the grader first look for?
A. Diameter of fiber.
Q. What does he look for next?
A. It is according to the grade which he is making.
Q. Isn't it a fact that he looks for the length of staple next?
A. In some grades.
Q. In all grades?
A. No.
Q. Is it essential for the grader to know to what industry the wool is to be sold—whether to the woolen industry or to the worsted industry?
A. No.
Q. Is it essential for the seller to know?
A. No.

Q. Is it essential for the buyer to know?

A. That is on the other side of the fence. I have never been a mill buyer.

Q. Is it essential for the seller to know what the buyer wants?

A. He generally makes his wants known.

Q. Don't you know that one of the first things that you look for when you sell wool——

Mr. HOPPIN. We won't have any browbeating of the witness.

General Appraiser MCCLELLAND. I have not yet discovered that the witness was not competent to take care of himself.

Q. (Continuing.) Is to inform yourself as to what particular industry that wool is fitted for?

A. We know that.

Q. And can you determine whether the wool is fitted at all for the clothing industry or worsted industry without knowing the length of staple? Answer yes or no?

A. That can not be answered yes or no by an intelligent wool man, because you do not know the qualifications or demands of your customer.

Q. I believe you stated that you sold both graded and ungraded wools to mills?

A. Yes.

Q. If ungraded, do the mills then grade the wool?

A. I can not answer what the mills do with the wool.

Q. You could answer what the mills did with the wool when Government counsel asked you?

A. Because I followed those wools.

Q. Then you never followed ungraded wool?

A. No.

Q. What mills, naming them, did you ever follow in any specific lot of wool which you sold them which was used in French combing?

A. That is infringing on private business that I do not think a witness should be required to answer.

234 General Appraiser MCCLELLAND. Well, leave it just as it is, and we will take that up when you resume.

Mr. HOPPIN. Could we finish the cross-examination?

Mr. STRAUSS. No; we have only begun. I am only warming up.

Mr. HOPPIN. Could we have this cross-examination continued at New York? Would that be agreeable to counsel? It will be continued there anyway.

Mr. STRAUSS. I think if the case is to be continued here on Thursday next, I think this examination should be continued here. We were told we would have to fish or cut bait, and that we would have to rest or not start. We have rested.

General Appraiser MCCLELLAND. Adjourned until Thursday morning next at 10 a. m.

PROTEST No. 942570, ETC.

BOSTON, MASS., *September 28, 1922.*

Before General Appraiser Charles P. McClelland

Appearances: The same as on September 21, 1922.

CARLOS J. FAWCETT, a witness for the United States, who had been previously sworn and who was under examination when the adjournment was taken, resumed the witness stand and his examination was continued, as follows:

Mr. STRAUSS. A question was asked the witness before adjournment, which the witness declined to answer on the ground stated, and no ruling was made.

(Question was read by the reporter.)

General Appraiser MCCLELLAND. I think it is proper cross-examination. It is testing the witness's experience. We want to find out the witness's practical knowledge.

Mr. HOFFIN. The witness has testified as to his experience, that he is qualified, that he has bought and sold wool. I don't think that he should be compelled to show who his customers are and with whom he is dealing. That is a trade matter that might be of serious disadvantage to him.

General Appraiser MCCLELLAND. That does not preclude the other side from testing that experience. There is nothing in that question that calls for the disclosure of any business or trade secret.

Mr. HOFFIN. I think that any man in the wool business will testify that a question of his customers is a matter which would be of the utmost value to his competitors.

235 General Appraiser MCCLELLAND. This witness is not in the manufacturing business.

Mr. HOFFIN. But he is buying and selling wool, and he has so testified.

General Appraiser MCCLELLAND. This is on the question of combing.

Mr. HOFFIN. It is a question of what these mills are doing. These mills may be dealing in various kinds of wools. Some mills may be putting in some wool which they might not ordinarily be putting into wools or worsteds. It is a trade matter and might be of vital importance to them in the disclosure of their names, where the wool named may be represented and may be of serious concern to disclose as to who his customers are, particularly as the examination may go on into the question of the kind of wool, etc.

General Appraiser MCCLELLAND. If it appears that the further examination seeks to disclose anything of a very private nature that would be prejudicing the witness with the people that he is cooperating with, why that will be another proposition, but up to date I don't see any sound objection.

Mr. HOPPIN. If your honor please, this is a question possibly that may be of vital importance to the witness in his business relations.

General Appraiser MCCLELLAND. In what way? How could the answer to this question injure anybody that he represents?

Mr. HOPPIN. Because it discloses the names of customers just like any other trade or business. He may be dealing with some gentleman represented in the inquiry, some of the gentlemen here at the hearing.

It may be of vital importance to him. I understand that in the trade it is of vital importance that these mills deal through various brokers and concerns, and they want to keep their transactions secret. If it is brought out with whom they are dealing they may be seriously prejudiced, and this gentleman here may be seriously injured in his business. He has testified as to his experience, that he bought and sold wool, that he has dealt with various dealers, etc. He is a well qualified witness, and I don't see that the disclosure of his private business is relevant or material at all.

Mr. STRAUSS. If your honor please, I don't think we need go on record and disclaim any intention to pry into the private affairs of the witness, but if that question is not proper, it will follow that any witness can state "I am qualified," and then decline to answer other questions.

General Appraiser MCCLELLAND. Other witnesses have been questioned as to the mills to which they sold wool, and as to
236 whether they had seen wool combed and graded, and what wools were used for this purpose.

Mr. HOPPIN. I don't want to deny what your honor says, but I don't think that any witnesses have disclosed their customers, or been asked with whom they dealt. I think it is not an absolutely proper question and competent in this inquiry. It may be very destructive of this witness's business. I think any of these gentlemen who deal in wool here will say that it is of vital importance to them, and that it is a trade secret as to with whom these mills are dealing.

General Appraiser MCCLELLAND. I think either side on cross-examination has the right to test the experience and competency of witnesses to the fullest.

Mr. HOPPIN. If your honor please, in stock transactions on the stock exchange, it would seem to be a matter similar to that. A man may want to buy control of some property. He may be dealing through half a dozen brokers. That is of vital importance to him to keep the matter secret; in fact, he may have a certain broker and may change around and not use that broker because of the fact that is known that he deals with that particular man. It is, as I understand, of vital importance to these mills that the parties with whom they deal is a trade secret and a matter of vital importance to them that the parties with whom they deal is kept secret. In addition, it is a disadvantage to the competitors to have him disclose who his customers are.

Mr. STRAUSS. This gentleman comes here and is not a party to the proceedings, although he is interested, and as we believe strongly interested and prejudiced on the Government's side of the case, seeking to maintain a duty for his customers or his association's interests.

Mr. HOPPIN. I object, your honor——

Mr. STRAUSS. Let me finish. May I go on without being interrupted? I say that the analogy of a man dealing on the stock exchange has nothing to do with it, and if he comes as a voluntary witness and states that he has knowledge of sales of certain stock, he is open to cross-examination as to when and where and to whom he sold them.

General Appraiser MCCLELLAND. I will overrule the objection, and I will pay particular attention to the questions that follow and if it appears that there is an attempt to disclose information prejudicial to the people he represents, I will protect him.

Mr. HOPPIN. Exception.

237 By Mr. STRAUSS:

(The question was read by the reporter, as follows: "What mills, naming them, did you ever follow in any specific lot of wool which you sold them, which was used in French combing?")

General Appraiser MCCLELLAND. That is testing his experience, absolutely.

A. Amana Mills.

Q. Where are they situated?

A. Iowa.

Q. What do they make?

Mr. HOPPIN. I object, your honor.

General Appraiser MCCLELLAND. I think I will have to overrule the objection. There can't be any possibility of injury to the witness, from answering that question.

Mr. HOPPIN. I except.

General Appraiser MCCLELLAND. It may appear that they don't use combing wool at all.

A. They make various kinds of cloth.

Q. Mention them.

A. They make blankets, flannels, and woolens.

Q. Worsteds?

A. No.

Q. Do you know the capacity of that mill?

A. No.

Q. What quantities of wool used in the French combing process have you ever sold them?

A. I can't tell you.

Q. What other mills besides that one?

Mr. HOPPIN. If your honor please, must this witness disclose his entire business?

General Appraiser MCCLELLAND. It is not his. He is talking about a mill that he has not any interest in.

Mr. HOFFIN. He has. It is one of his customers, and his business is dependent——

General Appraiser MCCLELLAND. A man can't come here and testify as he pleases as an expert and just close the door behind that statement.

A. Scherman.

Q. Where are they located, what locality?

A. Iowa.

Q. What do they produce?

A. Various articles of clothing.

Q. Enumerate some of them.

A. Ladies' dress goods, mackinaws.

Q. Worsteds?

A. No.

Q. What else besides mackinaws?

A. Those are the main—I can't answer as to every article.

Mr. HOFFIN. This witness testified as a wool expert and not as a mill man.

238 Mr. STRAUSS. If your honor please, the Government is evidently very much afraid to have the witness's qualifications tested, and I submit that I am allowed to go pretty far to determine his qualifications.

General Appraiser MCCLELLAND. Go ahead.

Q. You have testified, if I remember rightly, Mr. Fawcett, that you have had personal dealings in the Boston market, is that true?

A. No.

Q. In the Philadelphia market?

A. In the market with buyers from the market.

Q. In the market, or selling or buying in either of these markets?

A. With buyers from the market.

Q. Not in Philadelphia or Boston though, your dealings——

A. Wool is not located in this way.

Q. Where did the dealings take place?

A. At various places.

Q. Where?

A. In Chicago and in various places where the wool is concentrated and graded.

Q. You were in those cases acting as seller, is that right?

A. Usually I sold my own wool.

Q. Have you acted either as seller of any wool that belonged to the pool, that was in control of any of the pools that you have enumerated?

A. Yes.

Q. Now, what quantities, roughly estimated, have you personally sold in any market of the United States, to a dealer or a manufacturer, during the last two years—personally?

A. I can't answer that with any degree of accuracy.

General Appraiser MCCLELLAND. Oh, approximately what?

A. Approximately, in an advisory capacity, or the actual sales.

Q. Actual sales?
A. Possibly half a million actually sold.
General Appraiser McCLELLAND. Pounds?
The WITNESS. Pounds.
Q. Personally?
A. Personally.
Q. You mean half a million pounds?
A. Yes.
Q. During the last two years?
A. In the last year—possibly last year.
Q. How many other mills that you mentioned have you sold wool personally to, and followed that wool into the mill and followed its process of manufacture in that mill?
A. You have got that wrong. The former question as I remember was wool of those grades, and the mills, is that not it?
Q. I asked you what wools you had sold, to what mills, qualified by the further statement that I referred to wools that you followed into the mills and saw the process of manufacture.
239 General Appraiser McCLELLAND. But your last question, Mr. Strauss, was how much wool he had sold in the last two years personally. You didn't qualify it at all, as to whom the sales were made.
Mr. STRAUSS. My next question was qualified.
Mr. HOFFIN. I don't think the witness has testified as having followed the processes into the mill.
Mr. STRAUSS. He is an intelligent witness and is able to take care of himself very well.
General Appraiser McCLELLAND. It only relates to sales where he has followed the wool.
A. I can't answer that. I have in mind one other.
Q. What other is that?
A. That is the North Star.
Q. Also in Iowa?
A. No.
Q. Where?
A. Minnesota.
Q. What do they manufacture?
A. I can't answer that.
Q. You don't know?
A. I know what they were manufacturing when I was there—the operation——
Q. What did they manufacture as you saw them?
A. I watched the blanket operation at this particular mill.
Q. Were those combing wools?
A. Combing grades.
Q. Were those combing wools?
A. They were both combing and clothing grades that we sold them.

Q. Both combing grade and clothing grade?

A. Yes; that we sold them.

Q. In the course of your examination, Mr. Fawcett, I understood you to use the word "staple." Is that a word you are familiar with?

A. Yes.

Q. And that is, is it not, a term interchangeable with "combing"?

A. It is used.

Q. Interchangeably?

A. Yes; it is.

Q. When among wool buyers or in wool literature we run across the words "staple wool" it means combing wool, does it not?

A. Not necessarily.

Q. What else does it mean?

A. Staple wool is considered by the trade of sufficient length to be combed practically. Practically any length of wool can be combed and therefore most any length of wool might be combing wool, if the process is applied. Staple wool, however, is considered by the trade as of sufficient length to practically comb it.

Q. When you say any wool can be combed, you make that statement in the sense that any wool can be practically and commercially combed, or theoretically?

A. I did not state.

240 Q. Well, which is it? You have stated that any wool can be combed?

A. No.

Q. Do you adhere to the statement that you make that practically any wool can be combed?

A. Possibly; there is a possibility.

Q. What is that possibility, theoretical or practical?

A. Theoretical.

Q. Practically, can every wool or practically every wool be combed?

A. Shorter wools can not profitably be combed.

Q. The shorter wools that it is not practical to comb are wools that are used by the woolen industry, are they not?

A. That word "practically," understand me, is not to draw a distinct line of demarcation. That depends on the value of the wools. If the wools were of low value, it might not be practical to comb them; and if they were of higher value, it might be.

Q. If you will confine yourself not to what might be, but what is ordinarily under the usual conditions done, I will be grateful. Now, is it not true that wool is graded both with respect to length of staple and fineness of quality of the fiber?

A. Yes.

Q. Is it not true that the so-called blood terms, such as half blood, quarter blood, etc., refer to the fineness or quality of the fiber?

A. Yes.

Q. Is it not true that each quality of fineness as stated in terms of blood—half blood, quarter blood, etc.—are applied equally to staple wools and to clothing wools?

A. As far as the diameter of the fiber is concerned; yes.

Q. Do you not speak of one quarter blood staple or combing wools, and also one quarter blood clothing wools?

A. Of the grade, one quarter blood clothing——

Q. And one quarter blood combing staple?

A. And one quarter blood combing or staple.

Q. And that is true of all the ranges of blood, isn't that true?

A. No.

Q. Three quarters, half——

A. No.

Q. Do you not speak of half blood clothing wools?

A. Yes.

Q. Do you speak of half blood staple combing wools?

A. Half blood staple grade.

Q. I am asking you, in the exact language as I use it, do you not speak of half blood clothing wools and half blood staple wools or combing wools?

A. Do you refer to the commercial grades?

Q. I am referring to—in your experience among buyers or sellers or users of wool?

A. I am giving you my words, half blood staple——

241 Q. They are quarter blood staple grade?

A. Yes.

Q. And quarter blood clothing?

A. Yes.

Q. And so on through all the divisions of clothing, of terms of blood, isn't that true?

A. No.

Q. Where do you draw the line then?

A. Braid.

Q. What does that mean, that answer "braid"?

A. Braid is a commercial trade term.

Q. What does braid mean?

A. Common, or low quarter.

Q. In other words, it gets so low in its blood strain that it no longer is spoken of in terms of blood, is that right?

A. That is a commercial trade term, which designates the diameter of fiber and length of staple, as do the former terms just used.

Q. Now tell us, Mr. Fawcett, please, what is the difference between a half blood clothing and a half blood staple or combing wool?

A. As applied to grades the staple or combing grade, the staple grade is of greater length than the half blood clothing grade, when the grade is applied. Frequently, however, there is only one grade made, namely, half blood clothing wool, which includes both the long and the short fiber.

Q. Will you please explain that last answer?

A. In certain territories domestic wools are placed in grade lines with reference to blood only. As an illustration, three-eighths blood clothing wools, and sold under such trade names, which is generally recognized to include the three-eighths grade from that territory, distinguished by diameter of fiber only, including all lengths as grown on the original fleece.

Q. Following the history of any such lot of wool, would it not have to be graded into combing and clothing later on?

A. No. It is frequently sold in the original bags.

Q. To whom?

A. Mills.

Q. Well, are those in fact—are they long fiber wools that you speak of?

A. They contain all—you could not state one certain fiber.

Q. Are those in the original fleeces?

A. Yes, sir.

Q. Unsorted and ungraded, both?

A. They would not be graded until carded.

Q. Then you are speaking of an ungraded wool?

A. In the original bags.

Q. Have you looked at the exhibits, from 1 to 12, in this case, Mr. Fawcett?

A. Yes.

Q. I don't know whether you were asked or not on your direct examination—is it not true that all the exhibits, 1 to 12, inclusive, are combing wools?

A. Are you speaking of grade or class? I think the testimony read that they were all clothing wools.

242 Mr. STRAUSS. I move to strike out what the witness thinks the testimony shows.

Mr. HOPPIN. The witness is trying to answer the question.

Mr. STRAUSS. I ask to strike it out as not responsive.

General Appraiser MCCLELLAND. He has not really answered the question. He is trying to understand what you want.

Mr. STRAUSS. I move to strike it from the record.

General Appraiser MCCLELLAND. Strike it out and begin again.

(The question was read by the reporter.)

A. I can't answer that, for I have not examined them as to grade.

Q. Please examine them, then. Will you do so, please.

Mr. HOPPIN. The question has been asked and he is trying to answer his question.

General Appraiser MCCLELLAND. He says that he can't answer.

Mr. STRAUSS. He says that he has not examined the grades and I am asking him to examine them.

General Appraiser MCCLELLAND. The question is if he made a further examination, could he answer the question. He had better make the examination.

Mr. HOPPIN. The question was asked and he is trying to answer it.

General Appraiser McCLELLAND. I think he answered it very early in his testimony, so go ahead. The question is whether this in your opinion is clothing wool. Examine them with that end in view.

(Witness examines samples.)

(The question was read.)

A. No; I was not asked. They are combing grades. I was not asked the question before.

Q. Now, will you look at illustrative Exhibit "C."

A. (Witness examines exhibit referred to.)

Q. That is in fact a clothing wool, is it not?

A. Clothing grade.

General Appraiser McCLELLAND. Is there a difference between combing wool and combing grade?

The WITNESS. Yes; both combing and clothing grades are used for clothing, and are differentiated from carpet wools. The combing and staple clothing are commercial methods and designate by the length of staple, but they are all used for clothing purposes.

General Appraiser McCLELLAND. I notice that counsel used "combing wool" and you answered that they were "combing grade." I want to know what is the difference between combing wool and combing grade?

The WITNESS. It is a commercial grade.

Q. Now, have you dealt in carpet wools, personally?

A. No.

243 Q. As a matter of fact very few carpet wools are produced in this country; is that not true?

A. Very few.

Q. Mr. Fawcett, I am referring to the October, 1921, issue of the American Sheep Breeder and Wool Grower, to an article by C. J. Fawcett, director of the wool marketing department of the American Farm Bureau Federation. You are that C. J. Fawcett, are you not, who wrote that article?

A. No.

Q. You did not write that article?

A. No.

Q. Was your name used without authority?

A. My opinion is that the editor secured that from a conversation. I did not prepare the article. Mr. Burch did; that is my opinion.

Q. Mr. Fawcett, you have written quite a number of articles for that magazine, have you not, from time to time?

A. No; very few.

Q. Then you repudiate this as being your own production?

A. As being my own individual production; yes.

General Appraiser McCLELLAND. Was it submitted to you before it was published?

The WITNESS. No; it is based on a conversation with the editor; that is my best knowledge and belief.

Q. I refer to the American Sheep Breeder and Wool Grower of December, 1920, in an article headed, "Wool embargo bill," page 797, by C. J. Fawcett. Are you that Mr. C. J. Fawcett?

A. Yes; I presume so.

Q. You did not write that?

A. That, again, is a combination of conversation and compilation, with the editor.

Q. Now, coming back, Mr. Fawcett, to the October, 1921, number, page 501, heading, "What's what in the wool pools—C. J. Fawcett, director wool marketing department, American Farm Bureau Federation," let me ask whether this morning is the first time that you have seen that article?

A. I read the paper frequently, but not always, and I think I have seen the article, although I don't have any recollection of the time or place. The chances are I have seen it and read it.

Q. These various articles which were published by this magazine with your name as the supposed author have they been repudiated by you?

Mr. HOPPIN. I object to that. I don't see that there is any reason for it.

General Appraiser MCCLELLAND. I don't know, Mr. Hoppin. The articles that are appearing in this magazine with this gentleman's name at the top the public are reading and are justified in
244 assuming that he wrote them, or stands sponsor for them. Objection overruled.

A. Certain portions of them, yes.

Q. Publicly?

A. Before parties.

Q. Have you ever declined to allow the magazine to use your name as authority for these articles?

A. I have asked that my name be not used.

Q. Have you read that article, "What is what in the wool pools"?

A. I can't state that I have absolutely read all that article.

Q. Now, I will call your attention specifically to the next to the last paragraph of the article, in the second column of page 502, which says, "The market values on domestic wools of bright character may be quoted as follows," followed by the words "delaine, fine clothing, half blood staple, half blood clothing, three-eighths staple, quarter blood staple, quarter blood clothing, three-eighths blood clothing; low quarter, common and braid," and I ask you whether those are grades of wools which you recognize and which are recognized in the trade as being standard classification?

A. Standard grades.

Q. They are standard grades?

A. Yes.

Q. In so far as that grading or classification, whatever word you want to apply to it, is concerned, that follows your understanding,

does it not, of the character, trade, and common practice in relation to wools?

A. That are grades and terms in common practice.

Q. So far as that is concerned, you have no occasion to repudiate that article?

A. No.

Mr. STRAUSS. I offer that in evidence and ask that I may substitute a photostat copy.

General Appraiser MCCLELLAND. How can you strengthen it by offering it in evidence. You have it on the record now, and the witness has acknowledged it.

Mr. STRAUSS. There are other parts that go into greater detail.

General Appraiser MCCLELLAND. Are you offering the whole article or are you offering that part of it?

Mr. STRAUSS. If you honor please, I will withdraw the offer for the time being, if I may.

Q. Referring to that same article, Mr. Fawcett, I read to you from the first column on page 501, halfway down the column, "Where there appears"—please look at it yourself——

Mr. HOPPIN. If your honor please, this is not in evidence, as I understand it, and certain parts of it are being read into the record

245 General Appraiser MCCLELLAND. The witness has been shown the article—certain parts he stands for and certain parts he repudiates. They are reading parts of that article with a view to getting his answers as to whether he stands responsible for those particular paragraphs, and getting into the record in that way if he recognizes and admits responsibility for them. I think that is all right.

Q. I will read it, and in reading it to you I am not asking you to bind yourself as to the prices quoted there [reading]: "The market values on domestic wools of bright character are as follows: Delaine, 32 to 35 cents; line clothing, 25 to 27 cents; half-blood staple, 26 to 28 cents; half-blood clothing, 25 to 27 cents; three-eighths staple, 24 to 26 cents; quarter-blood staple, 21 to 24 cents; quarter-blood clothing, 20 to 22 cents; three-eighths blood clothing, 21 to 23 cents; low quarter, 17 to 19 cents; common and braid, 15 to 16 cents." Aside from the prices, are grades as given in that correct?

A. They are correct, as commonly used.

Q. And when the term "half-blood staple" or "quarter-blood staple" or "three-eighths staple" is used, it means half-blood, quarter-blood, or three-eighths combing, does it not?

A. Those which are susceptible to combing.

Q. Wools known as combing wools, does it not?

Mr. HOPPIN. I object. He has asked the question and the witness has answered it.

Mr. STRAUSS. May I be protected from interference.

General Appraiser MCCLELLAND. The last question was an assumption on your part.

Q. Is it not true that the word "staple" as used in this arti
is synonymous with the term "combing," as understood by deale
handlers, and growers of wools?

A. It may or may not be.

Q. Do you know?

A. I say it may or may not be, according to the requirements of t
mill.

Q. According to the requirements of the mill?

A. Some mills can comb wools that other mills can not.

Q. I am asking when the term "staple" is used among mill m
among growers, and among sellers and buyers, they mean combi
wools?

A. It means wools that of sufficient length to be combed profitab

Q. Which are known as combing wools, aren't they?

A. They are.

Q. Now, in your understanding of these terms as used in this
ticle, those terms are understood among all the States which
in these pools, is that not so?

A. They do not use exactly the same standard of grading

246 Q. But they do use the term "staple," and by it they me
"combing," is that right?

A. Not all, but most of them.

Q. Mr. Fawcett, in addition to your being director of sales of t
American Federation of Farm Bureau——

A. Wool marketing, I think the word is.

Q. Director of wool marketing?

A. Yes.

Q. All right. You, I believe, stated that you were also connect
with the National Wool Warehouse & Storage Co.?

A. Yes.

Q. In what capacity?

A. At the present time, assistant manager.

Q. Did that company sell, or deliver to the National Governm
at the time that all wools were being commandeered?

A. I was not connected with the National Warehouse & Stora
Co. at that time.

Q. Were you connected with them on February 21, 1919?

A. No.

Q. Now, let me ask you this: That National Wool Warehouse
Storage Co., do they grade wools?

A. Yes.

Q. That is a part of their business, is it?

A. Yes.

Q. Is there any standard of grading which they adopt?

A. They follow the commercial grades as recognized in the w
trade.

Q. And those grades include among various subdivisions, cloth
wools?

A. Clothing grades?

Q. Yes.

A. Practically all clothing wools; we handle no carpet wools.

Q. Does it recognize combing grades?

A. Yes.

Q. They divide wools given them for grading into clothing grades and combing grades?

A. Part of the wools handled by us are graded into the combing and clothing grades.

General Appraiser McCLELLAND. Now, won't you just put the different meaning to you as a wool man from clothing wool?

The WITNESS. Absolutely.

General Appraiser McCLELLAND. Now, won't you just put the difference in words on the record so that he who runs may read and understand.

The WITNESS. I will do my best.

General Appraiser McCLELLAND. I am not a wool man and I want to know something about it.

The WITNESS. "Clothing wools" is a term used to distinguish from carpet wools, and includes grades of practically all domestic wools, for they are used for clothing purposes principally, therefore practically all domestic wools fall in the class commonly known as "clothing wools," and that term makes a distinction between clothing and carpet wools, and practically no carpet wools
247 are produced in the United States excepting a small portion in Arizona, by the Navajo Indians, who run sheep—

General Appraiser McCLELLAND. You have defined clothing wools. Now, let us have "clothing grades," so as to have the difference between the two.

The WITNESS. "Clothing grade" is sometimes used to distinguish length of staple. At other times—confining our illustration to one three-eighths blood—blood has reference to the diameter of fiber. In certain sections of the United States we make the three-eighths grade without reference to the length of staple. In that three-eighths blood grade will be the lengths of staple as originally comes from the sheep. In other cases we will make a subdivision of that three-eighths grade and divide the short from the long staple, and the trade term for the short staple is three-eighths clothing, and the trade term for the long staple is three-eighths combing, and the trade term for the grade including both, which is standard, is three-eighths blood grade.

General Appraiser McCLELLAND. Doesn't "clothing wool," the term commonly used, include all these different grades?

The WITNESS. Yes; all except the carpet wools.

Q. If carpet wools are not being raised here, why does the domestic wool trade have to distinguish between what they claim as clothing wools and carpet wools?

A. I do not claim that they are not raised, but in very limited quantities.

Q. Why should anybody distinguish between what you call clothing division and carpet division, if very few carpet wools are raised in this country?

A. The need for the distinction?

Q. Yes.

A. As I see it, the spirit of the law was to protect the domestic wools, and inasmuch as there is very little carpet wool produced in the United States, it was not included, and the distinction has always been made between clothing and carpet wools, so far as I know.

Q. This definition you have given of clothing division, what you say is commonly known as, includes all wools that ultimately go into the manufacture of clothing. This distinction was not made until May 27, 1921, was it, when the emergency tariff was passed?

A. It had already been made, as far as I know.

Q. What was the necessity for making it prior to the passage of the emergency tariff act of May 27, 1921?

A. Wools going for different purposes and different grades were required.

Q. Can you state for me any authority recognized in the trade, any catalogue, any publication, any sales list, schedule, or otherwise, which follows out this distinction which you have attempted
248 to make here between clothing division and clothing grade?

A. I can refer to many references to the use of distinction between clothing and carpet wools.

Q. I am asking you to show me anything published by the Government, by growers, by buyers, or sellers, or mills, in the form of schedules, requests for quotations—anything—where these distinctions that you have tried to draw here are set forth?

A. Your honor, I have not been trying to make any distinction but what you have referred to which is in periodicals.

Q. Have you tried to make any distinction between clothing division and the clothing grade, Mr. Fawcett?

A. Yes.

Q. I say, will you give me a citation of anything recognized where that distinction is made?

A. The exhibit you have just shown me has reference to grades.

Q. Which do you refer to? Yes, but does it make reference anywhere to divisions of that kind?

A. It is not referring to carpet wools. I can furnish plenty of it.

General Appraiser McCLELLAND. Would not those be rather mill divisions?

The WITNESS. Yes, sir; absolutely yes.

Q. Which mill divisions are you speaking of?

A. The exhibits.

Q. Are not they also buyers' and sellers' divisions?

A. They are not known to the wool trade.

Q. And they are recognized by everyone having knowledge and cognizance of the wool trade, isn't that true?

A. The growers have practically no knowledge of the commercial grades.

Q. They have no knowledge of anything that they produce? They are philosophers.

A. They have a general knowledge of clothing and carpet wools, but so far as the trade names are concerned, they have very little knowledge.

Q. They have knowledge of the distinction between clothing and combing grade?

A. Some of them have.

Q. Most of them have?

A. Really, I won't say.

Q. They are a pretty intelligent lot of men?

A. Yes.

Q. Intelligent enough to pool their interests?

A. Yes.

General Appraiser McCLELLAND. They do that under proper leadership.

Q. Can you think of any trade publication, any Government publication, any articles in wool magazines, where it is specifically set forth in any instance, the subdivision of what you call the clothing division, into clothing grade and combing grade?

249 A. I can refer you to the Commercial Bulletin, which is generally considered as rather authentic, as representing——

Q. Where is that published?

A. I think it is published here in Boston—which sets forth a table.

Q. Do you think that the divisions and classifications and gradings appearing in that are authentic and correct in relation to wool?

A. They make reference to the clothing and carpet wools, if that is what you mean.

Q. Are they correct in their classifications?

General Appraiser McCLELLAND. As you understand them.

A. Generally speaking.

Q. So you think that if we get a copy of that it will correctly set forth the understanding of classifications, divisions and grades into which wools are understood to be divided by people having knowledge of wools?

A. Yes, sir; one table illustrates my view.

Q. What number is that, do you know?

A. As I remember it, it is May 13, 1921, or thereabouts. I would not be just exactly positive.

Q. Do you have it here?

A. No; I have not. I can get it, though.

Q. We can get it, too. But among the people familiar with wool the terms "clothing" and "combing" are never used interchangeably, are they?

A. Not used interchangeably?

Q. They mean separate articles, separate kinds of wool?

A. The terms are not used interchangeably. The wools are——

Q. Now you said that the wools are. Do you mean to testify, Mr. Fawcett, that combing wools and clothing wools are used interchangeably by the same people?

A. They are mingled a plenty.

Q. So a worsted mill will buy clothing wools and use them, is that right? Yes or no.

A. Yes.

Q. Will you give the name of any mill where you have ever seen that done?

A. I have sold them.

Q. Will you please give us the name of any mill where you have seen that done?

A. If the answer reads that I have seen that done in a mill I wish to retract. My understanding was that you asked if we had sold those. I say yes.

Q. You have sold both kinds, both combing and clothing to the same mill, is that what you mean?

A. Yes; French combing.

Q. And those mills as a matter of fact produce both kinds of yarn—woolen yarn and worsted yarn?

A. They are known as worsted mills.

Q. That does not answer my question, and you know that it does not.

A. I want to answer your question.

250 Q. Please answer my question.

A. I can't testify as to their product.

Mr. STRAUSS. That is all.

General Appraiser MCCLELLAND. I just want to call your attention to the fact that the witness was not called upon to disclose any business secret.

By Mr. HOPPIN:

Q. Mr. Fawcett, you have examined Exhibits 1 to 13?

A. 1 to 12.

Q. As to grade. Is there any question in your mind as to whether they would be included within what is commonly known as clothing wool?

Mr. STRAUSS. I object to that. "What is commonly known as clothing wool" is a conclusion of law for the court to decide.

General Appraiser MCCLELLAND. Objection sustained. That is a good objection. If he could determine that, there would not be any use for the Board of General Appraisers.

Q. Will you state for what purpose, from your knowledge, those Exhibits, Nos. 1 to 12, are commonly used?

Mr. STRAUSS. I object on the ground that it has not been shown that the witness has ever sold, bought or dealt in, manufactured, or used one pound of the wools shown in Exhibits 1 to 12.

General Appraiser MCCLELLAND. The mere fact that the sheep were raised in a foreign country would not necessarily mean that the wools were not of the same class and grades as wools raised in this country. I have not heard anything that indicated that the place of birth of the sheep had anything to do with the growth on the sheep's back. Objection overruled.

Mr. STRAUSS. Exception.

A. For the purpose of manufacturing into clothing.

Q. Now, Mr. Fawcett, applying to term clothing wool as you have used it in your testimony to-day, does it include or exclude Exhibits 1 to 12?

Mr. STRAUSS. I object to that as immaterial and irrelevant. That is a conclusion, if your honor please. Having stated the staple, the manner of manufacture of the various grades, it is for your honor to determine.

General Appraiser MCCLELLAND. He is giving now his personal judgment as to whether these wools have been included within the term as he understood it. Objection overruled.

Mr. STRAUSS. Exception.

A. It includes.

Q. And has that been true in your experience for a long time?

251 Mr. STRAUSS. Objected to on the ground that he can only testify as to his own understanding.

General Appraiser MCCLELLAND. That is what he is doing. For how long has that been true, according to your understanding?

A. Ever since I have had anything to do with wool.

General Appraiser MCCLELLAND. You can just as well give the time and period, because we don't know.

A. (Continuing.) Approximately 20 years.

Q. Will you examine Exhibit 13? [Witness examines.] I will now ask the same question as to Exhibit 13 as I asked previously as to Exhibits 1 to 12.

Mr. STRAUSS. I will have the same objection as to this question.

(The reporter read the question previously asked, as follows: "Now, Mr. Fawcett, applying the term clothing wool as you have used it in your testimony to-day, does it include or exclude Exhibits 1 to 12?")

Q. As to Exhibit 13?

A. Yes.

By Mr. STRAUSS:

Q. When you said, in answer to the Assistant Attorney General's question, that Exhibits 1 to 12 were used in baking clothing, you meant, didn't you, that they were used in making yarns?

A. That is a process.

Q. That is what you meant, didn't you—that they were used in making yarns?

A. Yes.

Q. As a matter of fact, those yarns which are made from wools like Exhibits 1 to 12, inclusive, are used in making a variety of different articles, is that not true?

A. I presume so. I am not a textile man.

Q. Now, will you please give us the name of any one man that you can cite who would offer Exhibits 1 to 12, or speak of them, as clothing wools, among people conversant with wool matters?

A. I think all would say that they were included.

General Appraiser McCLELLAND. That is not the question.

(The question was read by the reporter.)

A. I think I can.

Q. Will you give them?

A. I think J. F. Walker.

Q. Who is he?

A. He is a man who deals in wool.

Q. And he would offer wools of that kind as a dealer, as clothing wool, would he—Exhibits 1——

General Appraiser McCLELLAND. Now, gentlemen, that is the queerest kind of question I ever heard. What is the use of telling what another man would use?

Q. Have you ever?

252 Mr. HOPPIN. I object. I think he is going pretty far afield here.

Mr. STRAUSS. I will withdraw the question.

Q. I now ask you, have you ever heard of Mr. Walker speak of wools like Exhibits 1 to 12 as clothing wools?

A. Yes.

Mr. HOPPIN. I object——

General Appraiser McCLELLAND. He has answered yes.

Q. Where?

A. In discussing wools in public, before various legislative bodies and elsewhere.

Q. In an effort to secure protection?

Mr. HOPPIN. I object.

General Appraiser McCLELLAND. The question is whether he had heard him do it, and he said that he had.

Q. Where is Mr. Walker situated, his home, or place of business?

A. His place of business is Columbus, Ohio, and his home is in Gambier, Ohio.

Q. Did he use this term in Washington, before the Ways and Means Committee?

A. I have heard him use it in Chicago and at various places.

JOHN WILCOCK, a witness for the United States, was duly sworn, and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Wilcock, what is your business address, please?

A. 300 Summer Street, city.

Q. With what concerns are you identified?

A. Francis Willey & Co. (Inc.), Barre Wool Combing Co., and the Normay Worsted Spinning Co.

Q. Will you please describe your business?

A. Francis Willey Co. are wool merchants, domestic, importers. Barre Wool Combing Co. make tops or comb wool, and the Normay Worsted Spinning Co. make worsted yarns.

Q. Are you personally identified in any official capacity with the various firms you have mentioned?

A. Yes; I am president of the three concerns.

Q. And how long have you been in these various lines of business, respectively?

A. I was a wool merchant and comber 35 years; as spinner, 15 years.

Q. As top maker how many years?

A. Thirty-five years, connected with it.

Q. I want to ask you if you are a member of the Boston Wool Trade Association?

A. Yes.

253 Q. And have been for many years?

A. Ever since it was organized.

Q. Can you tell us the purpose of that organization?

Mr. SHARRETTS. I object to that as immaterial.

Mr. LAWRENCE. I want to simply bring out the purposes of the Wool Trade Association. I think my friends would like to know something of this association.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. To further the interest of the wool trade and manufacturers, in general.

Q. Now, as a wool merchant, what wools do you deal in?

A. Every kind of wool grown, practically.

Q. That is, in the United States, or in the world?

A. Domestic and imported.

Q. Have you personally purchased wools at wholesale?

A. Yes, sir.

Q. Outside of Boston?

A. Yes.

Q. In what parts, for instance, have you personally made purchases, in the United States or of the world?

A. I have made purchases personally in practically every primary market in the world and also in every State of the United States of America.

Q. And what countries would that include, in which you speak of the primary markets?

A. Australia, New Zealand, South America—Argentina, Uruguay, Punta Arenas, Canada, continental Europe, and the British Isles.

Q. Will you state whether you have been in South Africa to purchase them?

A. Yes.

Q. Have you been in intimate personal touch with these markets?

A. Yes; I have bought wools there personally.

Q. What quantities of wools does your firm import annually?

A. Anywhere from twenty to thirty-five thousand bales a year.

Q. Would you mind giving us an estimate of the weight that would amount to?

A. Say, fifteen million pounds, roughly.

Q. What amount of domestic and territorial wools do you handle?

A. We only handle domestic and territorial wools for combing purposes, which are used by the Barre Combing Co., and we probably handle twenty-five millions a year.

Q. What is meant by territorial wools, Mr. Wilcock?

A. Wools that are grown west of the Mississippi.

Q. So that, as a matter of fact, all territorial wools are domestic wools?

A. Oh, yes; they are.

254 Q. Of the wools that you import, are they combing wools or known as combing wools?

A. The wools that we personally import are 95 per cent combing wools.

Q. And do you largely treat those wools at your Barre plant?

A. Not necessary. We treat probably 50 per cent of them, and the other 50 per cent we will sell.

Q. Are you familiar with the classes and grades and sorts and divisions of wool that you handle?

A. Yes.

Q. Do you grade and sort the wools that you import and buy in the States?

A. Yes.

Q. Where do you do that?

A. At 300 Summer Street and at the Barre mills.

Q. How many men do you employ for that purpose, grading and sorting?

A. A hundred and fifty.

Q. What grades do you make?

A. Out of domestic wools we make, roughly speaking, 20 grades.

Q. And of the foreign?

A. Oh, I could make you 10,000 grades if you want me to out of foreign wools.

Q. What do you produce from your wools?

A. Tops.

Q. What are they used for?

A. Worsted spinning.

Q. And do you know what the worsted yarns are converted into?

A. Clothing, generally.

Q. What kind of clothing?

Mr. SHARRETTS. I object. He has not been shown to have any qualification with respect to mill working. I don't know what his experience has been.

General Appraiser McCLELLAND. What experience have you had following the yarns after they have been spun in the manufacturing?

The WITNESS. The sale of them to the mills to weave.

Q. Do you know what the mills weave from these yarns?

A. Yes; we have mills of our own that weave.

Q. Have you observed the process of weaving?

A. Yes.

Q. Have you seen the products which result from the weaving?

A. Yes.

Q. Will you please tell us what are the common products from the use of these wools?

Mr. SHARRETTS. He has not yet shown what the products are that are made from these wools.

General Appraiser McCLELLAND. Objection overruled.

A. The fine wools, generally speaking, are made into worsteds and serges.

Q. Do you mean worsted cloths?

A. Serge cloths, linings, dress goods, luster goods, and various other things.

255 Q. Do you buy your fire wools in the original state, or are they classified?

A. We buy both ways, both the original and classified.

Q. What do you mean by both ways?

A. I mean buying them as they come from the sheep without classification. That is the original wools. We buy other wools which we classify in the primary markets before shipment.

Q. What grades do you make out of the imported wools?

A. It depends from where it comes—Australia, South Africa, or New Zealand.

Q. Suppose it comes from Australia?

A. We grade it into English counts, which range from 28 to 80, the 80 being the finest wool and the 28 the lowest wool.

Q. Suppose it comes from New Zealand?

A. The same classification.

Q. And if it comes from South America?

A. We classify it in the same classifications again. But many firms in Boston imported it under 2's, 3's, 4's, 5's, etc., that is South American classification.

Q. How are the English?

A. Hoggets and wethers, according to the county from whence they came.

Q. Those you say are the common methods of grading in the various countries you have mentioned?

A. Yes.

Q. Coming now to the domestic wools, what is the system of grading?

A. The commercial is grading them into blood—half blood, three-eighths blood, quarter blood.

Q. And are the uses of the domestic wools that you buy and deal in, and manipulate, the same or different from the uses of the foreign?

A. They naturally go to different purposes, because they are of a different character wool. The wools that we use are practically all combing wools, and go principally to the worsted trade and the hosiery trade.

Q. Do you know whether in the ultimate they are or are not commonly used for clothing purposes?

Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. Either yes or no.

A. Yes.

Q. What is the fact?

Mr. SHARRETTS. That is objected to as leading. He practically stated to the witness what he wanted him to say.

General Appraiser MCCLELLAND. Yes; I think you probably should ask him what they were used for.

Q. What are they used for?

A. For clothing purposes.

Q. To what extent?

A. From our mills 95 per cent.

256 Q. That is both domestic and foreign wools?

A. Domestic and foreign, either long or short.

Q. Now in grading or sorting your imports or your domestic wools, do you make a clothing sort?

A. Yes.

Q. What quantity of that sort do you handle?

Mr. SHARRETTS. That is objected to as immaterial. It might be entirely misleading, what one man does.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. Roughly, 5 per cent.

Q. And what disposition is made of that wool?

A. We scour it and send it to the woolen mills.

Q. Do you know what it is made into, what kind of materials?

Mr. SHARRETTS. Yes or no.

A. Yes.

Q. How do you know, Mr. Wilcock, what it is made into?

A. I know from my personal experience that those wools are made into flannels.

General Appraiser MCCLELLAND. He wants to know whether you have become advised; if you operate a mill of that kind or have you worked in a mill of that kind?

The WITNESS. No; I have not worked in a mill of that kind.

Q. Have you visited such mills for the purpose of observing the character of their work and their output?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. No.

Q. Then how do you know, Mr. Wilcock, how such wools as you have just spoken of are used?

A. As I told you, from my experience with such wools, that such wools are only suitable for the purpose of making into woolen goods.

Q. Now, Mr. Wilcock, are you at all conversant with mohair, alpaca, and camel's hair?

A. Yes, somewhat.

Q. In what way?

A. We have handled mohair and camel's hair and alpaca. We do not make a specialty of it.

Q. Well, have you handled those hairs in substantial quantities?

A. Yes, large quantities.

Q. Approximately how much in a year?

A. In my early days in England we handled large quantities, but here I have not handled very much.

257 Q. Well, would it run into a thousand pounds?

A. Oh, say a million pounds.

Q. Now, do you know whether alpaca, mohair, and camel's hair are commonly combed in the process of preparing them?

A. Yes.

Q. How do you know what treatment they are subjected to?

A. Because I have combed them, and I know generally that they are combed.

Q. Do you happen to know the uses of mohair, and alpaca, and camel's hair?

A. Yes; pretty well.

Q. How have you acquired knowledge of the uses of these products?

A. By spinning them and making them into cloth.

Q. What are they used for, commonly?

Mr. SHARRETTS. The witness has answered, "by making them into cloth."

Q. I want to know what the cloths are commonly used for. State whether you have had any experience that would enable you to say what are the common uses of the cloths made from camel's hair, mohair, and alpaca.

Mr. SHARRETTS. Yes or no.

General Appraiser MCCLELLAND. No. That can not be answered that way. Have you had such experience?

A. Yes; surely.

Q. Please state what it has been.

A. I have made the yarns and the cloths.

Q. Yes; but now how do you know what the cloths go into?

A. They are used for——

General Appraiser MCCLELLAND. No; have you followed the cloths into consumption so as to be able to say what they are used for?

The WITNESS. I must have, if I have made them and sold them.

Q. Have you seen the products made from camel's hair, mohair, and alpaca?

A. Yes.
Q. Large quantities of them?
A. Yes.
Q. What are they?
Mr. SHARRETTS. That is objected to.
General Appraiser MCCLELLAND. I will allow him to state what he has seen.
A. What are what, the quantities? Or the uses?
Q. The uses of cloth made from alpaca, camel's hair, and mohair.
A. They are largely made into luster goods—luster linings, mohair, and alpaca.
Q. Well, for what purpose?
A. For clothing purposes.
258 Q. Mr. Wilcock, will you kindly examine Exhibits 1 to 13, inclusive?
(Witness examines exhibits referred to.)
Q. You have examined the exhibits, have you?
A. Yes.
Q. During your experience have you gained familiarity with the identifying characteristics of wools?
A. Yes.
Q. How would you classify these wools, Exhibits 1 to 13?
Mr. SHARRETTS. If your honor please, in what respect? I object to that question.
Q. As to grade or origin?
A. They are imported wools, evidently from the colonies, and they are all combing wools.
Q. Are you familiar with the term "clothing wool"?
A. Yes. From a commercial point of view, clothing wools are short wools which are not long enough to comb under either the Bradford system of the French system. Wools commonly known as clothing wools are all wools except carpet wools, which are used for the manufacture of garments, or cloth.
Mr. SHARRETTS. I move to strike out the answer as being entirely a conclusion of law.
Mr. LAWRENCE. The witness has stated that he was familiar with the meaning of the term and has set forth the two meanings—the technical meaning as distinguishing clothing wool from combing wool, and the broader significance of the term, which embraces all wools other than carpet wools.
General Appraiser MCCLELLAND. He went far beyond the question volunteered something that is very important in this case. Strike out the latter part of the answer, the last sentence, beginning with "Wools commonly known as."
Mr. LAWRENCE. If the term has more than one meaning, why should the witness be confined to giving only one. I except to your honor's ruling. He did not answer the question as I contemplated it. By the way, your honor has limited the answer by striking out a portion of it.

(The reporter was directed to read the question and complete answer, as originally given.)

General Appraiser McCLELLAND. He was not asked to state what clothing wools included. I will change my ruling, on hearing the question reread. Objection overruled.

Mr. SHARRETTS. I take an exception. The witness has used the language of the law there, and defined it.

General Appraiser McCLELLAND. You made no objection to the question. That is a full answer.

259 Q. Are you familiar with the term "carpet wool," Mr. Wilcock?

A. Yes.

Q. What does that term commonly include?

Mr. SHARRETTS. That is objected to as immaterial. We haven't any carpet wools here.

Mr. LAWRENCE. We are dealing with a tariff proposition which distinguishes between clothing and carpet wools.

General Appraiser McCLELLAND. Objection overruled.

A. Wools that are made into carpets, rugs, or floor coverings.

Q. Do you know how such wools are manipulated in the operation of converting them into yarns?

A. No.

General Appraiser McCLELLAND. Have you ever known any wools similar to Exhibits 1 to 12, inclusive, to be sold to be manufactured into carpets?

The WITNESS. No.

Q. What would be your reply as to Exhibit 13, as to whether that is commonly used for carpets?

A. This one?

Q. Yes.

A. No.

Q. I show you a sample which I will ask to be identified as "Exhibit JW."

A. That is a carpet wool.

Q. Can you identify that?

A. Yes.

Q. What is it?

A. Carpet wool.

Q. Is there any question about its being a carpet wool?

A. None whatever, in my opinion.

Q. What is there about that wool which distinguishes it from Exhibits 1 to 13, inclusive?

A. The coarse fiber and poor spinning qualities.

Q. From your knowledge of the combing and carding process, can you say whether such wool is adapted for either one or both processes?

A. No; that is adapted for carpet purposes. It is not suitable for combing.

Q. Why is that?

A. It is too low in quality.

Q. When you say "low in quality," what does that term "low" signify?

A. As to thickness of fiber.

Mr. LAWRENCE. I will ask that the sample be marked "Illustrative Exhibit D."

(There being no objection the sample just referred to was admitted in evidence, and marked "Illustrative Exhibit D," 942570, etc.)

Q. Mr. Wilcox, can you tell us whether carpet wools are ever combed?

A. No; we very seldom comb any. Sometimes they are made into tops on preparing machine for carpet purposes.

260 Q. Do you know if there are any carpet wools which are not combed.

A. Yes.

General Appraiser McCLELLAND. My recollection is that he never dealt in carpet wools at all.

Q. I think that is probably so. You have never dealt in them?

A. We do, but not in a large way.

Q. What may be a small way to you might look pretty big to me. Approximately what quantity of carpet wools?

A. This year 250,000 pounds of Scotch mountain wools, which are the carpet wools.

Q. Do you know how they are treated in converting them into carpets?

A. We have combed them ourselves and sold them to a carpet mill.

Q. Do you know if some carpet wools are converted into carpets without being combed?

A. I do not know.

Q. Where do you draw the line of distinction between carding and combing wools of the combing wool class? What determines whether it is combing or not combing?

A. All wools that are combed are naturally carded first; that is, for the worsted trade. Wools for the woolen trade are carded but not combed.

Q. Where do you draw the line? Why is it that some are combed and some are not?

A. It depends on the purpose they are required for. You can't make a dividing line.

General Appraiser McCLELLAND. Why are they not combed for the woolen trade?

The WITNESS. Because they are not spun as far, and are used for different purposes, different cloths.

Q. Can these wools or any of them be used interchangeably for either woolen or worsted?

A. Yes; they can be.

Q. But are they?

A. Not usually.

Q. Do you know of any wools which have been used interchangeably, depending upon various conditions, either as woolens or worsteds?

A. No: I can't specify any case.

By Mr. SHARRETTS:

Q. Mr. Wilcock, in the early part of your testimony, your direct examination, in referring to the various grades, you said there were a great many numbers of grades: then you referred to the Australian and the New Zealand and South American as being graded according to number.

A. Yes.

Q. That was the Bradford system of numbering?

A. Yes.

Q. Those numbers—the number itself refers just to the fineness of the fiber, doesn't it?

A. That number refers to the fineness of fiber, and to what count it will spin to—in yarn.

261 Q. Are not these numbers now more or less arbitrary? Do they actually indicate a spinning count?

A. Yes.

Q. What I mean is that where you see quality referred to by a certain number, does that necessarily mean that it will spin to yarn of that number?

A. Yes: in Europe: yes.

Q. But not in the United States?

A. No.

Q. So that, as far as the United States is concerned, those numbers simply describe a quality of fineness without very much reference to the yarn count that it is going into?

A. That is true.

Q. And as you say in the United States, they are more or less of an indication of fineness, and that is about all?

A. They are an indication of quality and fineness, whichever way you want to put it.

Q. That, of course, deals exclusively with the diameter of the fibres?

A. Yes: generally.

Q. There is, of course, a further division, is there not, in the case of each, clothing and combing?

A. Not so much in Europe as in America.

Q. Well, in the United States?

A. There is in the United States.

Q. There is that division into clothing and combing?

A. Yes.

Q. Even in the foreign markets they also use those terms of distinction, don't they—clothing and combing?

A. In Australia, especially, and in South Africa, but not in New Zealand, Argentina, and Punta Arenas.

Q. Is that because they are not graded there?

A. Yes.

Q. They run to practically one length and there would not be any necessity for dividing them?

A. No.

Q. Now, when you come to the domestic wools, they use the blood terms, I think you said?

A. Yes.

Q. I presume those ranges of qualities cover about the same range as the counts; that is, as fine, medium, and coarse qualities?

A. Yes.

Q. And they also, of course, in case of each quality of fineness are divided into clothing and combing?

A. Yes.

Q. And they sometimes or generally use the word "staple" instead of "combing"?

A. Yes.

Q. Those are interchangeable terms?

A. Yes.

Q. So that we find throughout the United States, and all quotations, trade journals, and combing, do you not?

A. As long as I have remembered.

Q. Now, this distinction between clothing and combing is based largely upon the general common use to which the wools go, is that not true?

A. Yes.

262 Q. In other words, as a general proposition the combing wools go to the worsted system of manufacture and the clothing wools to the woolen system of manufacture?

A. The combing go to the worsted manufacture and so-called clothing wools do not go to the woolen manufacture, for the simple reason we personally can comb the so-called clothing wools on our French system.

Q. That is, some of the combers are able to comb some of the clothing wool?

A. Yes.

Q. But, as a general proposition, there are those two common classes, the combing that go to the worsted system and the clothing that go to the woolen system. Is that correct?

A. That is correct.

Q. Now, when you state—I think I am quoting you correctly—that wools commonly known as clothing wools were wools used in the production of clothing. Is that correct?

A. In the manufacture of garments for clothing purposes.

Q. When you said "commonly known" you weren't referring to any practice in the wool trade, were you?

A. No.

Q. Were you referring to the dictionary?

A. I was referring to 99½ per cent of all the people of the United States of America.

Q. Now, how do you know what 99⅞ per cent of the people of the United States would say?

A. I know what I think, that 99½ per cent of the people think they know what wool is like, and that is all they know about it.

Q. So that when you use clothing wool in that sense that was as far as you meant to go, that that was your understanding of what these people other than people conversant with wool matters would think about it?

A. Yes.

Q. Not to any general practice of terminology?

A. No.

General Appraiser McCLELLAND. Among the manufacturers of wool and dealers in wool with whom you have come in contact and done business, either buying or selling, is the term "clothing wool" a term that is usually used among them?

The WITNESS. It is used amongst the trade in Boston, Chicago, St. Louis, Philadelphia, all the wool centers; all clothing wool among the trade commercially is short wool that is not suitable for combing purposes.

General Appraiser McCLELLAND. That is the common understanding of the term as you know it?

Q. None of these Exhibits 1 to 12 would be a clothing wool in that sense?

A. No, sir; they are all combing wools.

Q. As distinguished from the clothing wools?

A. In a commercial point of view.

263 General Appraiser McCLELLAND. Well, you have no other understanding of wools, of the different classes of wools, except what you have learned in the wool trade?

The WITNESS. None whatsoever.

Q. In regard to the carpet wools that you spoke of, Mr. Wilcock, how are they divided as to staples?

A. Into carding and combing wools.

Q. That would be practically clothing and combing wool?

A. Yes.

Q. Is it not true that carpet wools are used to some extent in the manufacture of clothing?

A. Not generally. There are exceptions to the rule.

Q. But under certain conditions of the market they are very likely to be used quite largely?

A. One certain type of carpet wools may be used.

Q. And they are actually used?

A. They are at times, according to conditions.

Q. That is, in the manufacture of clothing.

A. Yes.

Q. Has the term "clothing wool" any broader significance than the restricted meaning, drawing the distinction between clothing and combing?

Mr. SHARRETTS. That is objected to as calling for a conclusion.

General Appraiser McCLELLAND. Has it any broaded meaning than you have already defined?

The WITNESS. No, I think I have defined that.

Q. As what? What is your distinction?

Mr. SHARRETTS. You can't cross-examine your own witness. The witness has answered this question, and I don't think he should be torn to pieces by his own counsel.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. I want to know what is the—what his definition is.

266 General Appraiser McCLELLAND. We will turn to the record if you wish.

Q. I understood you to say that the meaning of the term "clothing wool" was first a commercial term, that which implied a distinction between combing and clothing, and, secondly, that it had a broaded meaning, which included all wools used for the manufacture of clothing, as distinguished from carpet wools. Do you adhere to that general definition?

A. Yes.

Mr. SHARRETTS. That is objected to. First, I don't think he has correctly quoted the witness, and, secondly, it is very leading, and it is cross-examination of his own witness. The witness has expressed himself very clearly on this record and is very competent, and I don't think that he should be broken down by his own counsel.

Mr. LAWRENCE. I am not breaking him down but I am straightening him up.

Mr. SHARRETTS. I move to strike out the answer. Instead of referring to what is actually said in the record——

General Appraiser McCLELLAND. The witness has answered and defined clothing wool as he understood it, and that he had no understanding as to its meaning outside of what he has learned in the trade. Now, the trend of your examination is to indicate to the witness that you were not satisfied with his answer.

Mr. LAWRENCE. Not at all. I was eminently satisfied with his answer.

General Appraiser McCLELLAND. You can lead your witness into saying something——

Mr. LAWRENCE. I don't want to. I want him to adhere to it.

General Appraiser McCLELLAND. Then go ahead. You are seeking to get him to give another definition than the one he has given.

Mr. SHARRETTS. I will ask to have the last answer stricken out.

General Appraiser McCLELLAND. Yes. There was an objection.

Mr. LAWRENCE. Exception.

Q. Mr. Wilcock, do you adhere to the definition of the meaning of "clothing wool" which you gave me on the direct examination?

Mr. SHARRETTS. That is objected to. His answer is there.

General Appraiser MCCLELLAND (to Mr. Lawrence). "Do you adhere" to the one that he gave you?

Mr. LAWRENCE. Yes.

General Appraiser MCCLELLAND. Why, it will be assumed that he does.

Mr. LAWRENCE. All right, I will stand on that.

267 By General Appraiser MCCLELLAND:

Q. If you were buying clothing wools, would you have in mind wools like Exhibits 1 to 12?

A. I don't buy clothing wools in the first place; all the wools that I buy are combing wools.

Q. You never have handled clothing wools?

A. We buy the original packages and after we assort them we are liable to find 5 per cent.

Q. Examine Exhibit 13. Have you ever dealt in wool like that?

A. Yes.

Q. If you were buying that kind of wool, what would you call it?

A. French combing wool, to make into French combing yarns.

Q. Exhibit 13?

A. Yes.

Q. Then you don't understand that to be clothing wool as you know clothing wool?

A. Not from my point of view.

Q. Everybody else has called it clothing wool?

A. Yes, because everybody else hasn't got French combs.

By Mr. LAWRENCE:

Q. In the sense that you were just speaking of combing and clothing wools, do you have reference to grades or classes, or qualities, or what?

Mr. SHARRETTS. That is leading.

General Appraiser MCCLELLAND. I will allow him to answer that.

A. I don't quite gather that question.

(The question was read by the stenographer.)

A. I have reference to this class of goods here, Exhibit 13.

Q. When you designate it as combing wool or clothing wool, just what do you mean by that?

Mr. SHARRETTS. That is objected to.

General Appraiser MCCLELLAND. He didn't say clothing, he said combing wool.

Q. In designating it as combing wool, what do you mean?

Mr. SHARRETTS. That is repetition and cross-examination.

General Appraiser MCCLELLAND. I think you are going too far, Mr. Lawrence. He has said that it was French combing wool. [To

the witness:] Is there any difference between French combing and combing wool?

The WITNESS. Yes.

General Appraiser MCCLELLAND. What is the difference?

The WITNESS. French combing wool is much shorter, which can not be combed on the Noble machines, or the English system, but can be combed on the French combs.

268 Q. What class of mills would use them, clothing or worsted?

A. Worsted.

Q. Always used by the worsted mills?

A. Practically.

Q. That is the French combing?

A. Yes.

Q. Could it be used in a worsted mill which does not employ the French comb?

A. No, not satisfactorily.

Q. Now, can you tell us, taking Exhibits 1 to 13, inclusive, what would be the common uses of those wools after they are made into fabrics?

Mr. SHARRETTS. That is objected to, as repetition.

General Appraiser MCCLELLAND. He has already stated that very clearly.

Mr. LAWRENCE. That is all.

The WITNESS. It is made into clothing.

WALTER J. MEADOWS, a witness for the United States, was duly sworn, and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Meadows, what firm do you represent?

A. Dupee & Meadows.

Q. Where is their place of business?

A. 262 Summer Street, Boston.

Q. What is your position with Dupee & Meadows?

A. Buying and selling wool on consignments.

Q. What kinds or classes or types of wool do you buy and sell?

A. Various. We handle domestic sometimes, and sometimes foreign. Sometimes more of one, and sometimes more of the other. More of the imported.

Q. How many years have you been in the wool business?

A. Over 40.

Q. You personally?

A. Yes; I have been employed in the business.

Q. In Boston?

A. Yes.

Q. Have you had occasion to buy wools in foreign countries?

A. In Great Britain. I have bought some in Belgium; I have bought some in South America.

Q. How many years have you been actively personally engaged in the buying and selling of foreign wools?

A. I should say about 20.

Q. How many years have you been actively personally engaged in the buying and selling of domestic wools?

A. Since 1894—the first year I went West.

Q. 1894. Do you import wools in large quantities?

A. Quite large.

269 Q. Approximately, what would be your annual imports?

A. I don't know. We buy and sell wool. We don't bother about statistics.

Q. Well, could you estimate whether it was a million pounds or five hundred thousand?

A. Our turnover amounts to five to ten million pounds a year.

Q. Of both domestic and foreign?

A. Both domestic and foreign.

Q. That is, the combined sales?

A. Combined sales, yes.

Q. What grades of wools do you handle?

A. Sometimes we specialize on fine wools, sometimes on medium, and sometimes on coarse.

Q. With respect to uses; what proportion do you handle?

Mr. SHARRETTS. That is objected to; with respect to their uses.

General Appraiser MCCLELLAND. Yes, there is nothing here to show that he knows anything about the uses at all.

Q. Are you familiar with the use to which your wools are devoted?

A. Yes; I know the purpose that the mills buy them for in a general way.

Q. Could you successfully conduct your business if you did not know what they need these wools for?

A. Hardly.

General Appraiser MCCLELLAND. Do you buy and sell wool under certain designations?

The WITNESS. Yes.

Q. What are the uses to which your wools are devoted?

Mr. SHARRETTS. That is objected to. He has no direct knowledge.

General Appraiser MCCLELLAND. Consul is entitled to know how he has acquired this information.

Mr. LAWRENCE. It seems to me almost absurb that a man who has been a successful merchant for nearly 50 years can't be supposed to have knowledge of the uses of the commodity that he is dealing in.

General Appraiser MCCLELLAND. I have never seen anybody, practically, on either side yet, that was willing to concede that assumption. They always want the proof. If no objection is made, all right, but when objection is made the witness must be qualified. Objection sustained.

Mr. LAWRENCE. Exception.

Q. Mr. Meadows, how have you acquired the knowledge of the uses to which the wools that you import and sell are put?

A. I have been in the mills and I know what they buy the wools to make.

Q. You have been through the mills, have you?

A. Yes, sir.

Q. You have seen the products of the mills?

A. Yes, sir.

Q. And have you seen materials made from the products of the mills?

A. Yes.

Q. Many times or few?

A. I do not visit the mills often now, and I never did, very much.

270 Q. Have you visited them enough to acquaint yourself with the development of your wool into finished products?

A. Yes, sir.

Q. What are the uses of the wool which you handle?

Mr. SHARRETTS. He has spoken of two instances: the uses by the mills that this gentleman has been in and the uses to which the product of the mills is put. I would like to know which he is speaking of?

General Appraiser McCLELLAND. You mean the uses of the wool?

Mr. LAWRENCE. The ultimate use, yes.

Mr. SHARRETTS. The witness has not been qualified.

General Appraiser McCLELLAND. The ultimate use of the wool, or the ultimate use of the yarn?

Mr. LAWRENCE. The ultimate use of the wool.

Mr. SHARRETTS. As I understand, that is limited to the mill in which this gentleman has been.

General Appraiser McCLELLAND. Of course he can't testify to anything else.

A. We sell wools that are known as combing wools to mills that make worsteds, and wools known as clothing wools to mills that make woolens, generally speaking.

Q. What is the difference between those two classes of wool that you have just mentioned?

A. It is largely a question of length.

Q. What is the real distinction; where is it drawn, as to length?

A. The line is indefinite. It is very often a case of availability. It is very often a case of advisability, and a case of what is profitable.

Q. You say some of those are graded as clothing and some as combing?

Mr. SHARRETTS. If your honor please, that is leading. That is not what the witness stated. He stated there were two kinds of wools.

General Appraiser McCLELLAND. He said combing and clothing.

The WITNESS. Those are the grades into which the wool is divided.

Q. And do you know whether wools which are graded as clothing wools are sometimes used in worsted mills?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser McCLELLAND. Objection overruled. Yes or no.
A. I know that worsted mills buy them.
Q. Worsted mills buy what?
A. Clothing wool and vice versa.
Q. Do you know whether wools of a given grade or quality are used interchangeably for woolens and worsteds?
Mr. SHARRETTS. Yes or no.
A. Yes.
Q. Are they?
271 Mr. SHARRETTS. The question is leading. He has suggested definitely to the witness what he wanted him to state.
General Appraiser McCLELLAND. Objection overruled.
A. Yes.
Q. Are you a member of the Boston Wool Trade Association?
A. Yes.
Q. Are you an officer in that association?
A. Yes.
Q. Are you familiar with wools designated as merino wools?
A. Yes, sir.
Q. How long have you known them?
A. Ever since I have been in the business.
Q. Do you handle them in a commercial way?
A. Yes.
Q. Do you know to what class of mills they are sold?
A. They are sold to both classes, according to lengths.
Q. By that you mean what?
A. Worsteds and woolens.
Q. Will you please examine Exhibits 1 to 13, inclusive. Are you familiar with the wools of the character represented by Exhibits 1 to 13 [witness having examined samples]?
A. Yes, sir.
Q. Have you dealt in them?
A. Yes, sir.
Q. How would you describe them?
A. They are of varying quality, but they are all combing wools with the exception of possibly the last one, which could be used for combing or clothing.
Q. Can you tell us whether or not there is any evidence of merino blood in those exhibits?
A. There is, in all of them.
Q. Are you familiar with the combing and carding processes as applied to wool?
A. I have seen them, but I am not a practical comber or carder.
Q. Do you know whether merino wools are commonly combed or commonly carded?
General Appraiser McCLELLAND. Yes or no.
A. Yes, I do.
Q. What is the fact?
Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. Objection overruled.

A. They are both carded and combed according to length.

Q. What determines whether a wool is adapted for a woolen mill as distinguished from a worsted mill?

A. Well, the woolen mills as a rule like a rather shortish staple.

Q. Do you know of your own knowledge whether combing wools are ever employed by the woolen mills?

A. I have known them to use them; yes. Wools which can be combed are sometimes called combing.

272 Q. When I speak of combing wools, I mean wools which it would be commercially practical to comb.

A. Yes.

Q. Is there any classification of wools by blood?

A. Yes.

Q. What wools are so designated?

A. Domestic wools.

Q. And what are some of the terms commonly employed in the trade in negotiating sales of such wools?

A. They vary somewhat in the different States, but in speaking of domestic wools you get fine delaines, you get fine, fine medium clothing, you get half blood, three-eighths, and quarter blood, and you get high half blood, low half blood, and high three-eighths and low three-eighths; you can make as many subdivisions as you feel like.

Q. Then what is the practice as regards Australian wools?

A. Those are bought largely on descriptions.

Q. What are they?

A. They are classified in the market out there usually, and you buy on descriptions.

Q. Under what descriptions? The wools here before us, are they designated in the market, in making sales?

A. These four [indicating] are merinos.

General Appraiser McCLELLAND. Would they be sold as merino?

The WITNESS. Yes, sir. The term "merino" would not be used; that would be understood.

Q. How would they be sold? What would they be called when you were selling them?

A. The manufacturer would come in and say, "Have you got 64 or 70?"

(Recess until 1.45 p. m.)

AFTERNOON SESSION

WALTER J. MEADOWS, witness under examination when the recess was taken, resumed the witness stand and his examination was continued as follows:

The WITNESS. On the question of domestic wool, it seems to be limited to clothing. I did not intend to so limit it. In the technical sense it means combing as well as clothing.

By Mr. LAWRENCE:

Q. Mr. Meadows, did you find in Exhibits from 1 to 13 any which were not merino?

A. Why, yes.

Q. I mean merino, either immediate or remote?

A. They are all merinos immediate or remote.

Q. How many years have you dealt in merino wool?

A. Do you mean personally as a member of the firm?

Q. Yes.

A. About 15 years.

273 Q. And have you dealt in Metiza wools?

A. That term is obsolete, and has been for a good many years. We never hear it mentioned in the trade.

Q. Metz?

A. That is obselete also.

Q. Metis?

A. You never hear it in any definition of wool.

Q. Is there a large variety of merino wools?

A. Why, yes.

Q. Have you dealt in a large variety during your experience?

A. Yes.

Q. To which grade do they belong, the combining or the carding?

A. They belong to both; that is, in a technical sense.

Q. How does one in the trade distinguish carding wool from the combing wools?

A. It is distinguished approximately by the length.

Q. Length of what?

A. Length of the staple.

Q. And what is the length which enables you to draw that distinction; about where do you draw it?

A. That varies a good deal, according to the kinds of wool that are available. Sometimes there is a shortage of combing wools and the combers will take a shorter wool than at other times. The woolen men will sometimes take longer wools. It is a question: it is a case of the inducement.

Q. What is the shortest length which you know could be used for combing?

A. I have heard of some being combed seven months ago probably not over an inch and a half.

Q. Have you samples of the wools which you import which are adapted to both combing and carding?

A. You have two samples there.

Q. Do these samples come from your stores?

A. Yes.

Q. Will you please identify them. Take one at a time, please.

A. I would call that a combing wool.

Q. Is that a type that you are familiar with in your trade?

A. Yes, sir.

Mr. LAWRENCE. I ask that that be marked "Illustrative Exhibit E."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit E," etc.)

Q. What is the other sample that you produce?

A. That is a clothing wool.

Q. And is that a type which you commonly handle?

A. Yes, sir.

General Appraiser MCCLELLAND. What is the recognized difference between the two?

The WITNESS. Its relative length.

274 General Appraiser MCCLELLAND. Combing is the longer?

The WITNESS. Yes, sir.

Mr. LAWRENCE. I ask that that be marked "Illustrative Exhibit F."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit F," etc.)

Q. Exhibit F, you say, is a colthing wool?

A. Yes, sir.

Q. Do you know whether it is adapted for combing?

A. Yes, sir.

Q. Do you know, as a matter of fact, that wool of that type and kind is used for combing?

A. It has been.

Q. Referring to Illustrative Exhibit E—you described that, I believe, as a combing wool?

A. A combing wool.

Q. Do you know whether its use is confined to the worsted industry?

A. It is not.

Q. What other industry uses it?

A. The woolen industry.

Q. Then, as I understand you, both of these samples have interchangeable uses in the woolen and worsted industries?

A. Yes, sir.

Q. Mr. Meadows, are you direct importers of wools?

A. Yes, sir.

Q. And have been for many years, have you?

A. Yes, sir. Before that I attended the customhouse work for my employers, with the firm that I was associated with.

Q. Before what?

A. Before I was a member of the firm myself.

Q. When were you made a member of the firm?

A. About 15 years ago.

Q. Prior to that how many years' experience had you had in wool?

A. I have been in the wool business 49 years.

Q. Prior to the time you were identified with Dupee & Meadows, what were your duties? Were you buying wool at all?

A. Well I began at the bottom and I worked up to the top. I started as the office boy and went into the West and bought wool, and went to England and bought wool, and to South America and bought wool, and between whiles, I sold wool.

Q. Do you import both combing and clothing wools in the trade since?

A. Yes, sir.

Q. Which do you import more of?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. I should say combing wool.

Q. What are the relative percentages?

A. It varies from year to year. It depends a good deal, that is, what the season is likely to be, whether it is going to be a woolen season, or whether it is going to be a demand for wools in preference to yarns, or vice versa.

275 Q. Does caprice and fashion have any influence on the use of wools in the woolen and worsted industries?

General Appraiser MCCLELLAND. Yes, or no.

A. Yes.

Q. Please explain how that is?

A. Some years woolens do not sell, and the fashion calls for worsteds, and if there is a shortage of worsted wools they comb a little shorter wools to make up the deficiency, and when worsteds are not selling and the fashions have run as they have this last year, more to woolens, why the shorter clothing wools are sold more. When those get short they use longer wools.

Q. Does it result in the interchangeable use, then, of the same wool in both industries?

A. Yes: if the wool is too long they break it up.

Q. Do you deal in carpet wools?

A. Not to any great extent. We deal in that portion of carpet wool that is known as East India, suitable for clothing.

General Appraiser MCCLELLAND. It is ever known as clothing wool?

The WITNESS. Not in the United States definition.

Q. Are you familiar with the term "clothing wool"?

A. Yes.

Q. Do you know its meaning?

A. You mean its general meaning?

Q. Has it more than one meaning?

A. Why, yes, sir, in a general way. You understand all wools that go into the manufacture of clothing is clothing wool.

Mr. SHARRETTS. That is not responsive to the question, and I ask that it be stricken out. Yes or no.

By General Appraiser MCCLELLAND:

Q. In your contract with the manufacturers and dealers, when you speak of the term, "clothing wools," what does that include?

A. We seldom speak of clothing wools as clothing wools.

Q. Do you ever speak of clothing wool as such in the trade?

A. Seldom. That is understood. That general term is understood.

Q. If you received an order for 25 bales of clothing wool, would a delivery of any one of the wools represented by Exhibits 1 to 12 be a good delivery under that term?

A. No, sir.

By Mr. LAWRENCE:

Q. Now, Mr. Meadows, you said you were familiar with the meaning, with the expression "clothing wool," did you?

A. Yes, sir.

Q. Has it more than one meaning to you?

A. Yes.

Q. Will you please give us the different meanings of the term "clothing wool"?

276 Mr. SHARRETTS. I object to that. I think the question is vague, unless there is some explanation as to what he means by asking the witness to give two meanings in speaking.

General Appraiser MCCLELLAND. He is going to explain now what it means to him. Objection overruled.

Mr. SHARRETTS. Exception.

A. In a general way—general meaning or specific meaning?

General Appraiser MCCLELLAND. We are concerned here with these wools represented by the samples. As to these, the witness has clearly stated.

Q. Please give us these meanings; the specific and general.

Mr. SHARRETTS. The witness is not qualified to give the general meaning. He may give the meaning that he uses and has come in contact with, but to ask the witness for the general meaning of a word seems improper. It is a function of the court.

General Appraiser MCCLELLAND. It seems to me that the witness has clearly answered as to these particular wools, the only wools that we are concerned with.

Mr. LAWRENCE. I am not concerning my question with any particular wools. I want to know the meaning of a term which he says that he knows, and of which there are at least two meanings.

By General Appraiser MCCLELLAND:

Q. Before you answer the question, I want you to state what is your understanding of a general meaning as distinguished from the definition that you have already given?

A. There are two main classes of wools grown; one is used for carpets and the other is used for clothing. If you ask me which I dealt in, I would tell you I dealt in clothing.

Q. Have you reference now to use rather than nomenclature of the trade?

A. That is the general use of the wool.

General Appraiser MCCLELLAND. Go ahead. Objection overruled.

By Mr. LAWRENCE:

Q. Please answer my question.

A. The general meaning of clothing wool is wool that is adapted to clothing purposes, in contradistinction to carpet wools.

Q. Do you mean the meaning of combing or clothing wools?

A. Clothing wools.

By General Appraiser MCCLELLAND:

Q. Do you include in that general meaning wools that are known as worsted wools?

A. Yes, sir.

277 Q. But they would not be known, you say, within the trade usage of the term, "clothing wools"?

A. The basic distinction is understood. A man does not come to our store and ask for combing. If we know he is a woolen manufacturer, if he says "have you any 64's or 70's or 60's," we show him what is technically called clothing wools.

Q. If you have in mind clothing wools.

A. But carpet wools, we do, it depends in the sense that the word comes to us.

Q. In the absence of any explanation, if you are talking about clothing wools, would you include combing wools like these?

A. No, sir.

By Mr. LAWRENCE:

Q. Have you outlined the two meanings which you had in mind for clothing wool?

A. I have outlined one, the basic.

Q. The basic was what?

A. In contradistinction to carpet wools: wools intended for the manufacture of clothing.

Q. What is the other definition?

A. That is wools, when the word is used synonymously with carding or woolen wools, wools suitable for use in woolen mills.

Q. Is there any other meaning?

A. There are some wools which are not specifically named as clothing. They include lamb's and second shearings, fall wools and spring, as far as the wools of less than a year is staple. Then there is a more specific meaning which refers to fine quality, which means particularly Australian or very fine wools suitable for white flannel.

Q. Coming back to your two broad classifications, clothing and carpet wools, how are they subdivided?

Mr. SHARRETTS. I object. There is nothing to indicate if they are further subdivided.

General Appraiser MCCLELLAND. Objection overruled.

A. Into combing and carding.

Q. And how is one distinguished, the combing from the carding?

A. By the approximate length.

Q. Of what?

A. Of the staple.

Q. Then are combing and carding wools subdivided by grade or quality or any other description?

A. Yes.

Q. How are they subdivided?

A. According to the fineness of the staple.

Q. Is that true of domestic wools as well as foreign wools?

A. Yes.

Q. And is it true of both clothing and carpet wools?

A. I don't know how much the carpet wools are subdivided.

278 Q. What other characteristics than the length of staple are taken into account by the wool expert in determ'ing the grade or quality?

A. Well we determine the quality by sight and somewhat by feel.

Q. What characteristics appeal to your sight?

A. The soundness of staple and length of staple.

Q. Do you deal in any ungraded wools?

A. Sometimes we have ungraded wools, and imperfectly graded wools.

Q. Would a bale of ungraded wool be adapted for woolen or worsted use or both?

A. It might be both; it would depend on the percentage of either.

Q. Have you dealt in wools, ungraded, which contained wools adapted for both of these uses?

A. Yes.

Q. Of the domestic wools that you handle, which prevail in quantity, the combing or carding varieties?

A. I should say the combing.

Q. Largely, or slightly, or what?

A. It depends on the season. Some seasons I have bought considerable of short-staple wools, wools of less than a year's growth, which are bought distinctly for clothing purposes.

By Mr. SHARRETTS:

Q. You have just stated, Mr. Meadows, that a certain lamb's wool, that short-staple wool, was bought distinctly for clothing purposes?

A. Yes.

Q. You mean by that for the woolen system of manufacture?

A. Yes.

Q. There you were speaking of clothing purposes, not with reference to wearing apparel?

A. At that time, yes, although some lamb wools are long enough to comb and might be combed.

Q. Then it would be a combing wool?

A. Yes.

Q. Wools are really classified as to fineness of fiber and length of fiber; that is correct, is it?

A. Yes.

Q. And there are various qualities of fineness, referring to the diameter of the staple?

A. Yes, sir.

Q. That would be blood terms in this country, or the count terms in the Bradford system, would it not?

A. Yes.

Q. Now each of those qualities of fineness in turn is divided into clothing wools and combing wools?

A. Yes.

Q. And the dividing line would change somewhat with the various qualities of fineness?

A. Yes, sir.

Q. And as a general proposition the clothing wools go to the woolen system of manufacture, and combing wools go to the worsted system of manufacture?

A. Yes.

Q. And sometimes a comber may comb a clothing wool?

A. Yes.

279 Q. And sometimes a woolen manufacturer may use what would really be combing wool?

A. Yes, sir.

Q. Now those two are rather an exception than the rule, are they not?

A. They are.

Q. My recollection is, that Government counsel at one point asked you to fix the exact line of demarkation between a combing and a clothing wool, and I think you said that that was rather indefinite or could not be described, or something of that kind?

A. Yes.

Q. By that you meant that you would have to see the wool to state which it was?

A. It depends largely on the inducement to get to a certain point on combing wools, where you get too many noils, but if you can buy it cheap enough, you can afford to buy it.

Q. That is, as a general proposition if you should put clothing wools on the comb the amount of noils would be so great as to make it impractical and unprofitable to employ the clothing wool in the combing operation?

A. Unless you could buy it especially cheap.

Q. Well, as a rule, can you buy combing wools cheap enough to produce a tremendous percentage of noils?

A. You can not, as a rule, but it might be done.

Q. It might, in exceptional cases?

A. Yes, it would, if combing wools came in free.

Q. Might not the seller of wool fix his price so that even then it would not be profitable?

A. The seller don't have much to say about it. He has to take what he can get. He usually knows what the market is, and he has to take what he can get from the manufacturer.

Q. I suppose you are familiar with the various Government publications and trade journals and quotations that you find in the market, are you not?

A. I have seen them; yes, sir.

Q. They invariably divide wool into combing and clothing, do they not?

A. No; I can't say that. It depends on the department which publishes it. As I recall it, the Department of Commerce publishes wool under two headings, and the Department of Agriculture covers reports based on reports which are rendered by the trade.

General Appraiser McCLELLAND. I think we had a splendid illustration this morning on how much weight ought to be given to magazine articles. We have stuff exhibited this morning that was under the name of the witness on the stand here, and he repudiated it. That may be true of all the others that are not accredited to anybody in particular, and nobody would stand sponsor for it.

I am speaking of the general recognition of the clothing wools
980 and combing wools. That there is a general well-recognized distinction between combing wools and clothing wools?

A. It is very hard to draw the line.

Q. But there are two very well, generally recognized distinctions?

A. But that is based on the supposition that we are handling clothing wools and not carpet wools. That is understood.

Q. I am speaking now of the general condition in the trade that you have come in contact with through your experience, that there has been a generally recognized distinction between combing wools and clothing wools?

A. Yes, sir.

Q. That general distinction has been that clothing wools are those that ordinarily go into the system of woolen manufacture?

A. Yes.

Q. Combing wools that ordinarily go to the worsted system of manufacture?

A. Yes.

Q. Now you used as term, I think, at one time, a fine de laine?

A. Yes, sir.

Q. That meaning, fine combing wool?

A. Yes; a merino combing wool.

Q. When you speak of merino, you are not referring to a purebred merino?

A. De laine is a little broader than purebred merino, and these are not merinos in the eye of the trade to-day. They are crossbreds, but under the general definition, they are merino.

Q. In the general definition that availed for at least five years, these are not regarded as merinos, they are crossbreds?

A. It depends on where the understanding was. If we came down to the customhouse, all we know here was class 1 and 2.

Mr. SHARRETTS. I move to strike that out as not responsive to the question.

Q. I am speaking now about the general trade recognition during the past five years with reference to Exhibits 1 to 12 which you have looked at—those would be regarded as crossbreds; they would not be regarded as merinos?

A. If you go back further than five years they would never be regarded as merinos in the trade, except these few samples which I have designated.

Q. How are the carpet wools divided?

A. I know we have some clothing carpets, and I know some are combed.

Q. Sometimes carpet wools are used ultimately to make wearing apparel?

A. Yes, sir.

Q. That has happened in the last two years?

A. That has happened more than that.

281 Q. It has been quite substantial?

A. Sometimes they can come in, sometimes they can't. Sometimes a person calls for them and sometimes he does not.

By Mr. LAWRENCE:

Q. Mr. Meadows, has the distinction between carding and combing wools suffered any change during your experience?

A. Why, yes.

Q. In what respect?

A. The combing wools have grown shorter.

Q. In other words, the ability to comb——

A. Has improved. The French combing has increased.

Mr. SHARRETTS. If your honor please. Mr. Lawrence is testifying. It is objected to as leading.

A. French combing has made it possible to comb shorter wools.

General Appraiser MCCLELLAND. That has already been testified to.

Q. Do you deal in any merinos which are not adapted for combing?

Mr. SHARRETTS. That is objected to as immaterial. I think he has covered this point. It is repetition.

General Appraiser MCCLELLAND. Objection overruled. The answer won't take any longer than the objection. Go ahead.

A. Yes.

Q. You deal in some that are not adapted to combing?

A. Yes, sir.

Q. Is that a large or small percentage of merinos which you handle, which are not combed?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Objection overruled.

A. It depends on the season.

Q. Can you give us any more definite answer than that, Mr. Meadows?

A. Yes.

Q. Please do so.

Mr. SHARRETTS. Objected to as immaterial. It has no bearing on this case at all.

General Appraiser McCLELLAND. Go ahead with the answer.

A. When it seems probable that we shall have a good demand for fine wools suitable for flannels and broadcloths and fine cloths of any kind, we give special attention to those wools, and when it looks as though those wools will be in more demand, we buy more.

Q. During the past year, of the merino wool that you have imported and dealt in, what are the respective percentages of combing and noncombing wools?

Mr. SHARRETTS. That is objected to as immaterial. It has no bearing on the case.

282 General Appraiser McCLELLAND. Why it is material as to what he handled? What possible bearing can the answer have on the issue here.

Mr. LAWRENCE. We can only promise that it will be, later on.

General Appraiser McCLELLAND. I will let it in.

Mr. SHARRETTS. Exception.

A. We specialize a good deal on scoured wools that are specially adapted to woolen purposes, and I presume that we handle, perhaps, a larger percentage than most people, along that line.

Q. Can you give a little more definite answer to my question?

(Last question read by the reporter.)

A. I could not tell you the percentage.

Mr. LAWRENCE. That is all.

WILLIAM A. PATTERSON, a witness for the United States, was duly sworn and testified as follows:

By Mr. HOPPIN:

Q. Where do you live?

A. Hingham, Mass.

Q. Where is your place of business?

A. 266 Summer Street, Boston.

Q. What is the nature of your business?

A. I am a dealer in domestic wools.

Q. And how long have you been in that business?

A. Forty-seven years.

Q. And have you bought and sold wool during that time?

A. Yes, sir, most of the time; for 40 years.

Q. During that time you have bought and sold to the trade, have you, Mr. Patterson?

A. To most manufacturers. By the trade we mean other dealers.

Q. You have sold mostly to manufacturers, have you, during that time?

A. Yes, sir.

Q. That is, to what class of manufacturers have you sold, Mr. Patterson; to what kind of manufacturers have you sold during that time?

A. To manufacturers of worsteds and woolens only.

Q. And during that time have you dealt in various grades of wool, have you bought and sold?

A. Grades that are grown in the Central States only.

Q. And have you had, during that time, personal experience in the grading of wool?

A. Yes, sir.

Q. Can you tell me, Mr. Patterson, into what classes wool is generally divided?

Mr. STRAUSS. I object. It is too vague. By whom?

283 General Appraiser MCCLELLAND. I think not. Objection overruled.

Mr. STRAUSS. Exception.

A. Into what classes is it divided?

Q. Yes.

A. It is divided into worsteds and carding wools, and those in turn are divided into various grades from merino, so-called—wool, and the coarser grades, as they run down, but not the carpet wools.

Q. And can you tell men into what general class those wools which you have just stated would be generally considered to be?

Mr. STRAUSS. What wools? He has not stated any wools.

General Appraiser MCCLELLAND. Yes, he has.

Mr. STRAUSS. He has divided them into two classes.

General Appraiser MCCLELLAND. He already designated the classes of wools. I don't know just what this contemplates different from the last question. What general class do you mean?

Q. What general class? I understood you to say, did you not——

Mr. STRAUSS. I object, as leading the witness—"I understood you to say, did you not."

Q. Did you say that from this general class which you have just stated, carpet wools were excluded?

Mr. STRAUSS. I object to it as leading. The witness has not said anything of the kind.

General Appraiser MCCLELLAND. You can find out what he said by repeating the answer.

Q. Did I understand you to say that what is commonly known as carpet wools were not included in the class which you have already——

Mr. STRAUSS. I object to that as immaterial; secondly, that it is grossly leading.

Q. Did you state——

Mr. STRAUSS. The record speaks for that. The witness has said they were carding, and subdivided those.

Q. You divided them into carding and worsteds?

A. I meant to divide them into worsted wools and carding wools, the worsted wools being used to make worsteds, and the carding wools being used to make woolens.

Q. And these wools are used for that purpose?

Mr. STRAUSS. I object to the question as vague—"these wools." Does it mean the wools that we are considering here, or the wools that the witness has spoken of?

284 General Appraiser MCCLELLAND. The witness has spoken of two wools used for worsted and carding. You can take them up separately if you want.

Q. I will ask whether the wools which you have stated to be other than used for the making of carpets that you have stated to be carding or worsted wools, for what purpose these wools are used?

Mr. STRAUSS. If your honor please, he has just stated that. That one is used for worsted and the other for woolens.

Q. Do you know for what purpose wools for worsted and woolens are used?

A. Yes, sir.

Q. What purpose?

A. Making clothing.

Mr. STRAUSS. I object to that on the ground that no knowledge has been shown.

General Appraiser MCCLELLAND. That is undoubtedly true; to qualify him, I haven't any doubt, for he has been 45 years in the business.

Mr. STRAUSS. In a limited class of the trade.

General Appraiser MCCLELLAND. He has been dealing in domestic wools. Go ahead.

Q. Can you tell me in what kind of wool you have been dealing during 47 years' experience?

A. Well, I have been dealing with that grown in the Central States of the United States.

By General Appraiser MCCLELLAND:

Q. You sell these wools to worsted and woolen manufacturers?

A. Yes, sir.

Q. Have you been sufficiently in touch with the mills using these worsted wools to advise yourself as to what they do with them?

A. Moderately. I have never been in very many mills.

General Appraiser MCCLELLAND. On that he would not be competent to tell what happened beyond the making of the yarn.

Q. Can you tell me whether you sell what you have determined as carding wool to worsted mills, and vice versa?

Mr. STRAUSS. Please answer, yes or no—can you tell?

Mr. Mr. HOPPIN:

Q. Will you tell me?

General Appraiser MCCLELLAND. Suppose you say "do you sell."

The WITNESS. Do I sell? Yes; we sell what we grade as carding or clothing wools to worsted mills frequently, they being the same term, to my mind, the carding being the same term as clothing.

Q. You state that carding and clothing are the same term. Will you explain what you mean by the "same term"—that closing
285 is the same as carding?

A. I so understand, both being shorter in staple than so-called combing or worster wool.

Q. Do you know of any other meaning for the term "clothing wool"?

Mr. STRAUSS. Answer yes or no.

A. Do I know of any other term for clothing?

Q. Do you know of any other meaning for the term "clothing wool"?

A. I think I do.

Q. What is it?

Mr. STRAUSS. That is objected to. The ordinary meaning of the word is a conclusion of law for this court to determine. This witness can testify only from the knowledge that he has gained in the course of long experience gained in handling Central States wools.

Mr. HOPPIN. That is what he has testified to.

Mr. STRAUSS. Then it should be limited to a meaning acquired in the course of dealing in wools——

General Appraiser MCCLELLAND. I think he has so testified.

Mr. STRAUSS. Will you honor instruct him to limit his answer to a meaning acquired in the course of dealing in wools?

Mr. HOPPIN. I object to any statement such as that. We are looking for the common meaning of the term "clothing and carpet wool."

By General Appraiser MCCLELLAND:

Q. Is there a term that you are familiar with used in the woolen trade as "clothing wool"?

A. Yes, sir.

Q. Well, what do you understand, as an experienced wool man, that that term includes?

A. The term "clothing wool" includes wools that are of shorter staple than the wools we term combing wools. They may be either very short or they may be only just short, not very short, because they are frequently used interchangeably either for clothing or combing purposes.

Q. Based upon your experience which runs through a long period of years, would combing wools ever be included within the term "clothing wools"?

A. The best way I can aswer that—will you allow me to answer that in my own way? We sometimes put up piles of wool for combing wools, and then when clothing wools were scarce we would take a part of that combing wool and sell it for clothing wool.

Q. I ask you in your wool parlance, when you use the term "clothing wool"—never mind the stringency of the time—would it include combing wool?

A. I think not, not in the trade parlance.

286 Q. Do you know any other parlance about wool? Do you think that the man on the street knows anything about it?

A. I don't know about the man in the street.

By Mr. HOPPIN:

Q. Mr. Patterson, you state that all these wools—that wool was divided, as I understand it, into what you denominated as carding wool and wool for worsteds, except carpet wool. With that distinction in mind is there any other meaning for clothing wool other than which you have given?

Mr. STRAUSS. I object to that on the ground that the witness has given his definition. He is cross-examining his own witness. No foundation has been laid to qualify the witness through other answers than those that he has given, and it is objectionable as leading, and he purports to quote from the record without giving the question and answer.

General Appraiser MCCLELLAND. I don't think all of those grounds are good. I am perfectly willing to allow Mr. Patterson to state anything within the range of his experience—what he understands—what was the term used, clothing wool? You may answer that.

Mr. STRAUSS. Exception.

The WITNESS. Yes, sir.

Q. What is it?

Mr. STRAUSS. I object, unless it is confined to the definition or an understanding acquired in the process of his experience as a wool manufacturer.

General Appraiser MCCLELLAND. All that is given. Of course you are testifying as a wool man, and your answers will be based upon your experience as such.

Q. What is it, Mr. Patterson?

A. My understanding is that the term "clothing wool" within this, means wools used to be made into clothing. The distinction of worsted and clothing wool is simply to grade those wools for the uses of the manufacturers to whom we sell them, to simply the process of manufacture.

Q. In other words, the sense in which you use the word "clothing" as distinguished from "combing" was in a technical sense?

Mr. STRAUSS. I object to that as leading.

General Appraiser MCCLELLAND. Objection sustained.

Mr. HOPPIN. I withdraw the question.

Q. Mr. Patterson, will you examine Exhibits 1 to 13, inclusive, and state whether they have the characteristics of the wool which you handle?

A. I should say most of them have.

287 Q. Well, can you pick out any one of these exhibits and state, from your experience, as to the character of the wool?

A. Do you mean as regards grade?

Q. Yes.

A. Why, I see almost every grade here.

By General Appraiser McClelland:

Q. Give each sample a sufficient examination to enable you to say under what class it falls, combing or carding.

A. I think I find two samples here that come under the classification of clothing wool of which I think they probably could both be used for combing. The others are all combing wools, in my mind.

Q. They are all combing except two; state what two are those.

By Mr. Hoppin:

Q. State of what blood.

A. About half blood, so called [referring to Exhibit 13]. This one here [referring to Exhibit 5]. I don't see anything that I think could not be combed, although two of them are not very good for combing purposes.

Q. Will you state what blood?

Mr. Strauss. I object to that as immaterial.

By General Appraiser McClelland:

Q. What would you class Nos. 5 and 13, as combing wool or as carding—the two that you have just spoken of?

A. Well, I think those two samples could be used as either.

Q. How would you classify those, as a wool man. Would you say that they were combing or carding?

A. Well, I think those two samples, I should reclassify them myself, if I was grading them; I would take out some short wool and——

Q. As to all of those samples that you examined, with the exception of 5 and 13, what do you say they are?

A. Combing.

Q. If you were speaking in the trade of clothing wool, would you include those wools similar to those samples or not?

A. Not technically. To sell them, I would not. I would call them combing.

By Mr. Hoppin:

Q. Having your definition in mind, Mr. Patterson, of the two classes known as clothing and carpet wools, into what classes would you say those come?

Mr. Strauss. I object. After laborious effect Government counsel managed to get the witness to give a definition of his own understanding. Beyond that he can not go.

General Appraiser McClelland. Objection overruled.

A. I should say they are all clothing wools.

Q. And can you state for what purpose those wools would be used?

288 Mr. STRAUSS. I object, on the ground that the witness has already been asked that. He has said that he did not go into the mills much, and did not follow the practice.

General Appraiser MCCLELLAND. He has already stated that, but I will let him state it again.

A. For the purpose of making clothing.

By General Appraiser MCCLELLAND:

Q. If you received an order for 25 bales of clothing wool or carding wool, if you sent wools like either of these exhibits here, with the exception of 5 and 13, would that be a good delivery?

A. I think that would depend a good deal upon what it was going to be used for.

Q. No, you say there is a term "clothing wool" that is used generally in the trade by wool men, and that it means something to them, doesn't it?

A. Yes.

Q. Now, then, if an order came for clothing wool, would any of the samples here from 1 to 13, and excluding 5 and 13, be a good delivery? Could you fill the order properly with those?

A. I hardly think I could.

By Mr. HOPPIN:

Q. Mr. Patterson, do you deal in ungraded as well as graded wools?

A. No, sir; we grade them. We buy ungraded wools and put them into the various grades.

Q. In the grading of these wools—how are those wools graded?

A. You do not mean the physical act of grading? You mean the grades?

Q. No, the considerations which you consider when you are grading these wools?

A. We grade them for length and strength; that is, each grade by itself. We grade them for length and strength, then we grade the different grades as regards the fineness or coarseness of the fiber of the wool.

Q. And do different mills require a different fineness of wool?

A. Yes, sir.

Q. Why is that?

Mr. STRAUSS. I object.

Mr. HOPPIN. I withdraw the question.

General Appraiser MCCLELLAND. I have tried to be liberal, but I think too much stress is being laid on the ultimate use of the yarns. The question here is, wool commonly known as clothing wool in the wool condition.

Mr. LAWRENCE. That may depend on its use, too.

Mr. HOPPIN. It is what is "commonly known."

289 General Appraiser MCCLELLAND. I think it is a question of what these wools are, if they have a meaning. Are they clothing wool or are they not?

Q. Will you state whether the majority—what percentage of wools handled by you are combing length and what are carding length?

Mr. STRAUSS. I object to that as entirely immaterial and irrelevant to the question at issue, what percentage any one individual man may say.

General Appraiser MCCLELLAND. I quite think you may be right, Mr. Strauss, but it can't do any harm.

Mr. STRAUSS. Exception.

A. The majority of it is combing wool. I should think probably three-fourths; it depends on the season. If we have had a good growing season for wool, there is more combing wool that year than there is clothing in proportion. If we have had a poor year, a poor season for sheep, and poor climatic conditions, there is more clothing wool grown in proportion.

Mr. STRAUSS. I move to strike out everything after the percentages that he gave.

General Appraiser MCCLELLAND. Yes; strike it out.

By Mr. STRAUSS:

Q. Mr. Patterson, you used the term "carding wool." That word "carding" as used by you in your testimony is synonymous with clothing?

A. Yes, sir.

Q. And you used the term there wool for "worsted" or "worsted wool" when you spoke of that; that is synonymous with combing wool?

A. Yes, sir.

Q. You spoke also of buying ungraded wools and grading them or having them graded for you?

A. Yes.

Q. I understood you to say that the first thing you look for is the length of staple of fiber in grading; is that right?

A. Yes, sir, and the grade of wool, too.

Q. The purpose of determining—the first thing you do is to look at the length and strength of fiber—the purpose of that examination——

A. I did not mean to say that.

Q. The purpose of that examination is, is it not, for the purpose of dividing the wools for grading purposes into clothing and combing wools?

A. Yes.

Q. After that division into clothing wools and into combing wools has been made, you then go into the fineness or coarseness of
290 the fiber, you say; that is for the purpose of grading each one of those two divisions, namely, combing and clothing, into its blood; isn't that right?

A. Yes.

Q. There are three-quarter combing wools and three-quarter clothing wools?

A. Yes, sir.

Q. And so on all the way down, the final subdivisions of blood, namely, half clothing, half combing, quarter combing, quarter clothing, three-eighths combing, and three-eighths clothing?

A. Yes.

Q. Now when you gave a secondary definition to the words, "clothing wools," you were referring entirely to the ultimate use which you believed the cloths that were made out of the yarns went into; is that right?

General Appraiser McCLELLAND. You are shut off from that altogether. You are shut off from testifying as to the question of final use.

Mr. STRAUSS. He was permitted to testify that they were used, as he believed, for clothing purposes. He was permitted to answer that over my objection. On that point I want to cross-examine him.

General Appraiser McCLELLAND. Go ahead.

Q. When you spoke of that secondary definition, that all of these wools, Exhibits 1 to 13, inclusive, and all combing wools and all carding wools were ultimately used for cloth, it was in that sense that you meant that they might be called clothing wools?

A. Because they are all made into clothing.

Q. Because they ultimately go into clothing, among other things?

A. Yes.

By General Appraiser McCLELLAND:

Q. Mr. Patterson, you said about three-quarters of your business was in combing wools?

A. Well, what I meant to convey is, that the wools that come from the country where we handle them mostly, that about 75 per cent of them were graded as combing wools, usually.

Q. You handle both combing and clothing?

A. Yes, sir; in the trade term.

Q. You deal in them under these terms, do you?

A. Yes, sir.

Q. Now as you use this term, "clothing wools," would it include or exclude the samples that you have examined this afternoon?

A. Most of them would be combing wools, these samples.

Q. Would the term "clothing wool" as you use it in the trade include or exclude these wools?

A. It would include some of them there.

291 Q. Which, the two?

A. Those with short wool in them. I would regard them if I were going to handle them.

Q. Those two?

A. Yes.

Q. As to the others?

A. Clothing wools, in the trade term.

Q. Would they be included in the trade term "clothing wool," as you use it?

A. Not as we sell them to the manufacturer; no, sir.

By Mr. STRAUSS:

Q. You know something about carpet wools, Mr. Patterson?

A. No, sir.

Q. You are familiar with carpet wools?

A. No, sir; I know absolutely nothing about them.

By Mr. HOPPIN:

Q. Mr. Patterson, in the trade sense, as I understand, you include all of those exhibits within the term "commonly known as clothing wool"?

Mr. STRAUSS. I object to that as leading, and an outrageous question. It involves so many vices, it seems almost impossible to enumerate them.

General Appraiser MCCLELLAND. Objection sustained. I think the witness has had every opportunity both on your examination and Mr. Strauss's and mine, to explain his understanding fully of the term.

Mr. HOPPIN. Exception.

Q. I would like to know whether your understanding is that these are commonly known for clothing purposes?

Mr. STRAUSS. I object, on the ground that it is leading.

General Appraiser MCCLELLAND. The witness has already testified.

FRANK R. PRATT, a witness for the United States, was duly sworn, and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Pratt, what is the name of your firm?

A. Joseph H. Wheelock & Co.

Q. What is your business address?

A. 158 Summer Street.

Q. What is your business?

A. Broker in wool, commission—buying and selling.

Q. How many years have you been in that business?

A. Since May, 1888; 34 years.

Q. Do you import wool?

A. On order.

292 Q. Do you handle, as commission merchant, do you handle foreign wools?

A. I am not a commission merchant. I am a commission buyer and seller.

Q. As a commission buyer and seller, do you handle foreign wools?

A. Yes, sir.

Q. From what countries?

A. Australia, New Zealand, South Africa, South America, France, England.

Q. Canada?

A. No, sir.

Q. Do you handle any, that is, as a general buyer, any domestic wools?

A. Yes, sir.

Q. How largely?

A. It varies according to the years. Sometimes it is a larger amount of domestic and sometimes it is a larger amount of foreign.

Q. Well, now, would your annual transactions run up into the thousands or millions of pounds?

A. Many millions.

Q. Has that been true throughout your long experience?

A. No: I cleaned signs once.

Q. How long have you been handling wool on a large scale, you personally?

A. Twenty-five years.

Q. And are your transactions between the wool dealer and wool consumer?

A. Some.

Q. What is the fact when it is not that way?

A. We buy for the dealer.

Q. You buy for the dealer in this country?

A. And others.

Q. You deal directly with the mills, do you?

A. We don't deal.

Q. Do you negotiate sales for mills?

A. Yes, sir.

Q. Both woolen and worsted?

A. Yes, sir.

Q. Do you come in contact with wool in any way in the capacity as commission buyer?

A. Oh, yes.

Q. How?

A. We are given orders and have to solicit to fill those orders.

Q. Do you have samples?

A. Sometimes.

Q. Are you personally familiar with the identifying characteristics of the different wools that you have testified to?

A. I think so.

Q. What I mean is, are you sufficiently familiar with wools from the various countries to identify them according to their origin?

A. Yes; leaving out carpet wools.

Q. Do you handle carpet wools, by the way?

A. No; I don't know anything about them.

Q. Have you acquainted yourself with the characteristics which the woolen and worsted mills desire in wools, do you buy them?

A. From instructions, mostly.

293 Q. Do you know the qualities and characteristics of wool that you sell to the woolen mills?

A. Yes.

Q. You likewise know the qualities and characteristics of the wools which go to the worsted mills?

A. Yes, sir.

Q. Do you buy any wools which are used interchangeably by woolen and worsted mills?

A. Oh, yes.

Q. Is that a common experience?

A. Now.

Q. I call your attention to Illustrative Exhibit E [indicating].

A. That is Australian.

Q. I ask you if you are familiar with wool of that type?

A. That is Australian merino.

General Appraiser McCLELLAND. You answer is, yes, or no.

The WITNESS. Yes.

Q. As a commission buyer have you handled wool of that type?

A. Yes.

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. May I state the ground of my objection? This witness may know these things, but I don't think he has brought it out. He has brought out that the witness sometimes sees samples and that he is selling on commission. There is nothing to indicate that he has never had occasion——

General Appraiser McCLELLAND. I assume that he would not have gotten very far if he had not known something about wool. Objection overruled.

Q. Can you identify that as any class or type of wool that you have become familiar with in your experience?

A. Yes.

Q. What is it?

A. It is a fine merino combing.

Q. Have you supplied mills with wools of that type.

A. I have bought wool of that type for mills.

Q. For what class of mills?

A. Worsted and woolen.

Q. Now will you please look at Illustrative Exhibit F—in what form do your instructions come to buy wool like Exhibit E?

A. Well, from one mill that I buy for, it is a woolen mill, and if they instruct me on this wool, they tell me to buy a good staple wool—fine 64's to 70's quality Australian.

Q. Do you use samples in negotiating these transactions?

A. I see other samples; in some instances I see samples, and in other instances I see the wool in the bales. That goes back to my other answer: I see the wool somehow.

Q. Could you, in a business way, fulfill orders without knowing the characteristics of the wool that was specified in the orders?

A. Not for 25 years.

294 Q. Please look at Illustrative Exhibit F and tell us whether you are familiar with wool exhibiting its characteristics?

A. That is a clothing wool, or might be called a French combing.

Q. Do you know whether it is adapted for the worsted mills?

A. I am not competent, excepting to say that for one of our worsted customers we buy such wools; for what purpose they use it, I am not competent to say.

Q. It is such a wool as you sometimes send or forward to the worsted mills?

A. Oh, yes.

Q. Is it, within your knowledge and experience, adapted for any other woolen or worsted mill?

A. Yes.

Q. You say it is?

A. Yes.

Q. What other mill?

A. Woolen.

Q. Have you delivered wool of that character as Exhibit F to woolen mills?

A. I have bought for woolen mills wool of this character.

General Appraiser McCLELLAND. One of your mills, I understood you to say?

The WITNESS. A mill we buy it for.

Q. Have you bought it also for worsted mills?

A. For the French machines.

Q. For the worsted mills?

A. Yes.

Q. Are you familiar with the grades into which the wools that you buy are divided—the grades by which they are designated?

A. Yes.

Q. And have you had any experience in grading wool?

A. Yes.

Q. What are the usual terms applied to the grades of Australian wool?

A. The usual terms?

Q. Yes; what terms do you generally employ to designate the grade of Australian wools?

A. All the way from 90's down to 32's.

Q. And do you personally know what are the requirements of wool to meet those designations; by examining the wool can you tell whether it is a 30 or 50?

A. Oh, yes.

Q. Do you have occasion to do that in fact?

A. I wish to say there, if I would be permitted, that various mills vary in their ideas of exact quality, but they are very close. For instance, Bradford spinners would be a little lower in quality than we would.

Q. And do you have occasion, in your daily transactions, to identify wools by the count numbers?

A. Yes.

Q. Do you handle any wools as commission buyer which are graded by other terms than by count?

A. You mean quarter blood and that sort?

Q. Yes.

A. Yes.

295 Q. What wools are those which are designated by the blood?

A. Mostly domestics.

Q. Of the domestic wools that you handle, to which class of mills do they go, to the woolen or worsted mills?

A. Both.

Q. Do you know of any domestic wools which are taken interchangeably by woolen and worsted mills?

A. Might I add worsted and woolen top makers also?

Q. What do you mean by that?

A. We buy for top makers, for combers that comb wool into tops.

Q. Do you handle more of the combing than of the carding varieties?

A. No; I think not.

Q. What is a top maker in the sense that you use it?

A. A comber.

Q. Are you familiar with the term "baby combing" as applied to wool?

A. Yes.

Q. Do you deal in it as a commission buyer?

A. Yes.

Q. To what class of mills does that go?

A. Woolen.

Q. What are the distinguishing characteristics, generally speaking, between the wools which go to the woolen mills and those which go to the worsted mills, leaving out of consideration now those which have interchangeable use?

A. I buy combing wool, as I said, like this [indicating Exhibit E], at times.

Q. Mr. Pratt, leaving out of consideration for the time being the wools that are used interchangeably by the woolen and worsted mills, I want to know now, taking the distinctly woolen and worsted wools, what are the distinguishing characteristics?

A. Oh, difference in staple.

Q. Just what is that difference?

A. If I may answer in this way; we designate by preparing combing, French combing, and clothing.

By General Appraiser McCLELLAND:

Q. What is the real difference between French combing and combing?

A. Not much; mills use that term that have the French machinery.

Q. Doesn't all the difference lie in the fact that the clothing wool may be used on the French comber?

A. Yes, sir.
Q. But couldn't be used on any other?
A. Yes, sir, that is it.
Q. It is still clothing wool?
A. In the blood sense; yes, sir.

By Mr. LAWRENCE:

Q. Do you buy any carpet wools at all?
A. No, sir.
Q. In your experience have you become familiar with the expression, "clothing wools"?
A. Yes.
296 Q. How long have you known that expression?
A. I always used it.
Q. Do you know the meaning of the term—yes or no?
A. Clothing.
Q. Clothing?
A. Yes.
Q. Has it more than one meaning, as you understand it?
General Appraiser MCCLELLAND. Do you mean as applied to wool?
Mr. LAWRENCE. Yes.
Mr. SHARRETTS. That is objected to. He is leading him. Let him ask him what the meaning is.
General Appraiser MCCLELLAND. You mean the meaning of the term in the wool trade as he learned it?
The WITNESS. Yes; I know the meaning.
Q. Has the term "clothing wool" more than one meaning?
Mr. SHARRETTS. That is objectionable. Let him ask him what the term means.
Mr. LAWRENCE. I want to ask him as I see fit.
General Appraiser MCCLELLAND. That won't give us any light. He can give us all the meanings, as he understands it, to signify, based upon his experience. Go ahead and tell us what the meaning of the term "clothing wool" is, and if it has more than one, give us all of them.
The WITNESS. Clothing wool means, it is a question of staple—in the wool trade, short staple.
Q. As distinguished from what?
A. From the longer staple—French combing and combing.
Q. Has the term any other meaning?
Mr. SHARRETTS. That is objected to.
General Appraiser MCCLELLAND. I told him to give them all.
A. You don't use it in any other way that I know of.
Q. The term, "clothing wool"?
A. No.

By General Appraiser MCCLELLAND:

Q. Now if this wool that you have spoken of as being short staple for French combing had longer staple, what would it be?
A. Combing.

Q. And it would be no longer known, of course, as clothing?
A. Not in our language.

By Mr. LAWRENCE:

Mr. Pratt, did you not tell me that the term "clothing wool" included all wools which were used in the manufacture of clothing?

Mr. SHARRETTS. That is objected to.

297 General Appraiser MCCLELLAND. Tell you when and where and how?

Mr. LAWRENCE. Just before he went on the stand.

General Appraiser MCCLELLAND. He has testified now. I do not care what he told you.

Mr. LAWRENCE. I think I can claim surprise.

General Appraiser MCCLELLAND. You are examining him. That won't do.

Mr. LAWRENCE. I think it is a privilege——

General Appraiser MCCLELLAND. That has gone beyond the limit.

Mr. LAWRENCE. Counsel may assert surprise at the answer of the witness.

General Appraiser MCCLELLAND. There is only one condition that would permit you to make that kind of examination, that is, if you found him to be an adverse witness.

Mr. LAWRENCE. He is adverse to that extent.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception.

Q. Mr. Pratt, do you mean to say that the term "clothing wool" has only the meaning to which you have testified, that is, as distinguishing one grade of wool from another?

Mr. SHARRETTS. That is objected to. It is cross-examination.

General Appraiser MCCLELLAND. Yes; I think so. The witness is a very clear-headed and long-experienced wool man, and he has given answers and repeated them, and I don't think he ought to be questioned about the meaning of those answers, which are couched in very plain language.

Q. I will ask you again, Mr. Pratt, did you not tell me in the office and subsequently in this room that the term "clothing wool" in its broad significance included all wools commonly used in making clothing?

Mr. SHARRETTS. That is objected to as immaterial and leading, and it is cross-examination.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. I offer to prove by the witness that, if permitted to answer the question, that he would say that he did so inform me.

The WITNESS. I did not understand the question, your honor.

General Appraiser MCCLELLAND. What is the difference? He was entitled to make an offer. If it goes to the Court of Appeals and he is on the wrong side of the question when it is decided, he is entitled to this statement on the record.

298 Q. Mr. Pratt, are you familiar with the term "carpet wools"?

A. The term; yes.

Q. Do you know the characteristics——

Mr. SHARRETTS. The witness has testified that he never dealt in carpet wools.

General Appraiser MCCLELLAND. Do not answer where there is any objection until it has been passed upon.

Q. Do you know the characteristics of wools which are used in the manufacture of carpets?

General Appraiser MCCLELLAND. Yes or no.

A. Yes.

Q. Will you please examine Exhibits 1 to 13 on the table?

A. For what?

General Appraiser MCCLELLAND. You examine them and see what you identify them to be.

Q. For the purpose of identifying them as to grade, quality, and origin.

(Witness examines exhibits referred to.)

Q. Do you handle wools like the exhibits?

A. Yes, sir.

Q. To what class of mills do you sell wools of that type?

A. Worsted and woolen.

Q. From your general knowledge of the business do you know whether such wools are adapted for carpet making?

Mr. SHARRETTS. Yes or no.

A. No, sir, they are not.

Q. For what are they adapted?

A. Worsted and woolens.

Q. And what are the worsteds and woolens used for?

A. Why, clothing.

Q. Do you make any broad distinction between clothing and carpet wools?

A. Well, I know that some so-called carpet wools have been used for clothing.

Q. That is not the question. You distinguish between the two classes as to use?

A. Yes.

Q. And having in mind those two distinctions by use into which class do these fall?

Mr. SHARRETTS. That is objected to as immaterial. The question of use has nothing to do with it.

General Appraiser MCCLELLAND. Into which class does what fall?

Mr. LAWRENCE. Wools, Exhibits 1 to 13.

General Appraiser MCCLELLAND. He did not say that. He said worsteds and woolens, and ultimately made into clothing.

Mr. LAWRENCE. If your honor will follow the record there you will find that he has drawn down to two classes.

299 By General Appraiser McCLELLAND:

Q. I want to be right. Do I understand you to classify these samples that you have examined as clothing wools?

A. Combing and two other; that might be either.

Q. The others are combing?

A. Yes, sir.

Q. Aren't those that you found to be combing wools included within the term clothing wool as you understand it in your trade?

A. We would not call those clothing wools in our trade, except those two here [indicating Exhibits 5 and 13].

Q. The question contemplated his saying whether they were clothing wool. Are these either carpet or clothing wools—these samples that you have examined?

A. They are not carpet wools, they are combing wools, except these two might be used for either combing or clothing.

Q. Would you say that except those two, that either of the samples there could be classed as either carpet or clothing wools?

A. Not carpet wool.

Q. That is only half an answer. Could they be classed then, as clothing wools?

A. Only two samples; the rest are combing.

Mr. LAWRENCE. I still insist on an answer to my question.

General Appraiser McCLELLAND. If you haven't had an answer to your question you never will.

(The question referred to by Government's attorney was read by the reporter as follows: "And having in mind those two distinctions by use into which class do these fall?")

The WITNESS. Between carpet and clothing—clothing.

Q. Do you now want to change you answer and say that it is a clothing wool?

A. For what use, I understood him to say.

Q. No; I am speaking about clothing wool as you understand it in your trade.

Mr. LAWRENCE. I am speaking of clothing wool as a class, not according to the technical trade distinction. I am asking him on the basis of broad classification by use, between the clothing and carpet use, what class he would put those in, and I understood him to say that it would be clothing.

Mr. SHARRETTS. He has changed the form of the question completely.

General Appraiser McCLELLAND. Let it stand.

By Mr. SHARRETTS:

Q. Mr. Pratt, in that last question, all you meant there was, that these wools might eventually be used in the manufacture of clothing; is that all you meant when you said "clothing," in reply

300 to counsel's question? When you described these exhibits as clothing?

A. I did not describe these as clothing.

Q. Then you did not mean to describe Exhibits 1 to 13, with the exception of 5 and 13, as clothing wool?

Mr. LAWRENCE. He has distinctly said that he would classify them as clothing rather than as carpet.

The WITNESS. I so stated, that it was a combing wool, excepting two.

Q. You did not intend, under any condition, to describe them as clothing wool?

Mr. LAWRENCE. He did so describe them.

Q. You have examined certain of these samples here and state that they were combing wool. You know that?

A. Yes.

Q. You did not mean later to say that those samples that you had previously described as combing wool were clothing wool?

A. I did not answer any such question as that. I said they would be used for clothing.

Q. And that is all you meant to imply that they were used for?

A. I have answered, two kinds.

General Appraiser MCCLELLAND. He has said that. What is the use of going over the ground twice?

WILLIAM A. BLANCHARD, a witness for the United States, was duly sworn and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Blanchard, where is your business?

A. 246 Summer Street.

Q. What firm are you associated with?

A. I am in business for myself.

Q. What is your business?

A. At the present time I am a wool broker.

Q. Tell us just what is a wool broker?

A. A wool broker is a man who negotiates sales of wool from one dealer to another, or from a dealer to a mill or mills.

Q. How long have you been engaged in that occupation?

A. As a wool broker I have been engaged about 15 years. I have been in the wool business——

General Appraiser MCCLELLAND. Fifty?

The WITNESS. Yes, sir.

Q. Do you handle foreign wools?

A. Yes; to a certain extent I do.

Q. And domestic wools?

A. Yes.

301 Q. And domestic wools more largely than foreign?

A. Domestic wools more largely than foreign, and pulled wool more largely than anything else.

Q. What is pulled wool?

A. Wool that is pulled from the pelt of the slaughtered sheep.

Q. Do you come in contact with the trade generally in the United States?

A. Why, I come in contact with the dealers, and I come in contact with some mills.

Q. And all over the United States?

A. No; over this New England section.

Q. What varieties of foreign wools are you familiar with, commercially?

A. More particularly Australian, South American, and Cape.

Q. Does that include merino?

A. It does.

Q. How long have you been familiar with the foreign wools of the merino type?

A. Well, perhaps 15 years.

Q. Are you familiar with the characteristics of merino wools?

A. Yes.

Q. Do you buy them for mills as a broker?

A. Yes, in a limited way, but I also sell from one dealer to another.

Q. Do you know to what purpose the merino wools are adapted, whether for the woolen or the worsted industry?

A. Both.

Q. What are the designations which are used in negotiating sales of foreign wools; what terms do you use in the trade?

A. Why, in the terms of grades, I would say they number from 90's down to 32's.

Q. And are those numbers commonly employed in negotiating sales of foreign wools?

A. Yes.

Q. Are you familiar with the characteristics of wool which identify it by number?

A. In domestic wool?

Q. In foreign wool.

A. I do not understand your question.

Q. I understand you to say that in negotiating sales of foreign wool they were designated by count number.

A. Yes.

Q. Are you familiar with the characteristics of those foreign wools which enable you to identify them with a given count?

A. Yes.

Q. And in dealing in domestic wools what terms are commonly employed between buyer and seller to designate the different kinds of wool?

A. The terms fine, half blood, three-eighths, quarter blood.

Q. These are all blood designations, are they?

A. Yes.

Q. And you are sufficiently familiar with those designations to identify wools by those terms?

A. Yes.

Q. Do you know the difference between carding and combing wools?

A. I do.

302 Q. How do you determine whether wool is of one class or the other?

A. By the length of staple.

Q. Would that be the only consideration?

A. Soundness of staple. I think that is all.

Q. Do you handle any ungraded wools?

A. No.

Q. Has your experience acquainted you with the ultimate uses of wools?

A. Yes.

Q. In what way?

A. Why, I know into what classes of goods these various wools would go.

Q. Have you seen the goods made from wools like those which you handle?

A. Yes.

Q. Which do you handle mostly, combing or carding wools?

A. More carding wools, as a broker.

Q. And what articles have you commonly seen fabricated from such wools?

Mr. SHARRETTS. That is objected to. It is a long way between Mr. Blanchard's occupation and the ultimate article made from the wools.

General Appraiser MCCLELLAND. I understood him to say that he had some experience in the mills.

Mr. SHARRETTS. I did not understand that he had a mill experience.

The WITNESS. I said I had transactions with mills.

By General Appraiser MCCLELLAND:

Q. Have you had any experience in the mills—in observation of the process of manufacture?

A. I have been in them.

Q. Are you familiar with the processes of manufacture?

A. No, I should say not.

Mr. SHARRETTS. He wants to know the articles made out of them.

General Appraiser MCCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception.

By Mr. LAWRENCE:

Q. Mr. Blanchard, have you been in mills and seen wools of types that you buy and sell utilized?

A. Yes.

Q. Have you seen the products made from those wools?

A. I have.

Q. Do you know what they were used for, or have you seen them in use so that you can tell us what they are used for?

A. Yes.

Q. What are they used for?

Mr. SHARRETTS. That is objected to as immaterial, and on the ground that he has not been qualified.

General Appraiser MCCLELLAND. Objection sustained.

306 A. Why I have seen some of these wools that I have sold go into yarns, and woven into clothing. I have been through the finishing room and I know what class of goods certain goods I sell make.

General Appraiser MCCLELLAND. What kind of cloths did you see made?

The WITNESS. Cashmere and tweeds, and flannels, and woolen goods.

Q. Do you know what they were ultimately used for—horse blankets, lap robes, or clothes, or what?

General Appraiser MCCLELLAND. Do you know anything beyond what you saw in the mill?

The WITNESS. No, excepting that the cloth was used for some purpose. It was not thrown overboard. It probably went into cloth.

General Appraiser MCCLELLAND. I don't think there is any use in pressing it.

Q. Mr. Blanchard, are you familiar with the characteristics of carpet wools?

A. Yes, perhaps, in a general way.

Q. Well, is there a well-defined distinction between carpet wools and clothing wools, generally speaking?

A. A very well-defined distinction.

Q. Now you have become acquainted with the term "clothing wools," haven't you?

A. Yes.

Q. In a more or less general way?

A. Yes.

Q. What do you include, generally speaking, in the class of clothing wools?

A. All wools that can be manufactured into cloth suitable for clothing.

Q. Then has it also a more restricted sense as implying a grade of wool in the technical sense?

A. It is a commercial sense, or you might call it a trade sense.

Q. As relating to what?

A. To distinction between carding and combing.

Q. Now have you examined the exhibits here?

A. I have not.

Q. Will you please do so?

(Witness examines exhibits.)

Q. Do those wools possess characteristics that you are familiar with as a merchant and wool broker?

A. Yes, sir.

Q. Have you handled wools of that general type?

A. I have.

Q. Now bearing in mind the two meanings that you have given to clothing wool, first, the broad meaning, second, the trade meaning, will you please tell us whether these wools fall within either of those meanings?

A. They do, both.

Q. As what?

A. As clothing wool distinct from carpet wool, in the general common sense division.

304 Q. How long has that been true, to your knowledge?

A. Why, in my experience as a wool man.

Q. Now has the term combing wool as applied to grades, suffered any change during your experience; that is, has it been broadened or narrowed, or what?

A. Why, it has broadened very much.

Q. Why is that?

A. Well on account of the introduction of an entirely different system of worsted machinery in the trade.

Q. What has been accomplished by the introduction of that machinery?

A. Why wools that were formerly adapted to woolen machinery only, can now be used by worsted mills who have French combs.

Q. Well, what do the French combs do that the combs formerly used did not perform?

A. It combs much shorter wool.

Q. Will you please look at Illustrative Exhibits E and F and state whether you are familiar with either or both of those types of wool?

A. Yes.

Q. Can you tell from the examination that you have made, whether they are adapted for combing?

A. This one, E, is adapted for combing, and this one, F, I should call a clothing wool.

By General Appraiser McCLELLAND:

Q. Why do you make that distinction in calling E combing and the other clothing?

A. This is [referring to F] so short that it could not be combed. If it is impossible to comb it, the French combs could handle that wool, possibly.

Q. Won't both of these wools represented by E and F, when spun into yarns, finally go into the manufacture of clothing?

A. Yes.

Q. Why did you make the distinction between E and F, by calling one combing and the other clothing wool?

A. Well, I am using the trade term.

Q. As you know it as a wool man?

A. As I know it as a wool man.

Adjourned until 9.30 a. m. to-morrow.

BOSTON, MASS., *September 29, 1922.*

PROTEST No. 94257, ETC.

Before General Appraiser Charles P. McClelland

Appearances: The same as the day previous.

WILLIAM A. BLANCHARD, a witness for the United States, who was under examination at the time of adjournment yesterday, resumed the witness stand, and his examination was continued as follows:

305 By Mr. LAWRENCE:

Q. Mr. Blanchard, can you tell us from what parts of the world carpet wools come?

A. Yes.

Q. Where?

A. China, Asiatic Turkey, India, the west coast of South America.

Q. Is it within your knowledge that any are produced in the United States?

A. No.

Q. What is the carpet wool market of the United States?

A. Philadelphia.

Q. And where is the clothing wool market?

A. Boston is the principal.

Q. Do you generally regard it as the principal market in this country for clothing wools?

A. Yes.

By Mr. SHARRETTS:

Q. Mr. Blanchard, I think that in your early testimony you referred to various grading terms, with respect to foreign wools as being counts?

A. Yes, sir.

Q. That is, I presume, they run from 90's down to about 33's, something like that?

A. 32's.

Q. Each of those numbers refers to a quality of fineness?

A. Yes, sir.

Q. That means the diameter of fiber?

A. Yes.

Q. Now, in the case of domestic wools, the blood terms are used to designate the various qualities of fineness, is that correct?

Mr. LAWRENCE. If your Honor please, I would greatly appreciate it if counsel would stand back a little farther, where we can hear him as well as the witness.

General Appraiser MCCLELLAND. Yes.

Q. In connection with the domestic wools they use the blood terms to designate the various qualities of fineness?

A. Yes.

Q. In connection with foreign wools each quality of fineness is divided according to length of staple into combing and clothing wools, is that correct?

A. In the trade, yes.

Q. In fact, they are, are they not?

A. Yes.

General Appraiser McCLELLAND. They are not divided at all outside of the trade, are they?

The WITNESS. No.

Q. Now, throughout your experience in connection with wools the term "clothing wool" has always referred to the short-staple wools that ordinarily go to the woolen system of manufacture, is that correct?

A. Yes.

306 Q. And the combing wools, or staple, has always been those longer staple wools that ordinarily go to the worsted system of manufacture, isn't that correct?

A. Yes.

Q. You spoke of a broader understanding of the term "clothing wool" in the light of the final use of the wool. That is not any understanding that has ever existed in the trade dealing in wool, is it?

A. No.

Q. You were referring to some outside understanding that you supposed to be correct, is that right?

A. Outside of the trade.

Q. Not to any definite, concrete use of words?

A. No.

Q. Now, you also spoke about final uses of the wools going into the manufacture of wearing apparel?

A. Yes.

Q. I don't suppose you have ever traced any particular lot of wool to find out what its final use was, have you?

A. I have traced it to the cloth, and in two instances I recall that the manufacturer, who was a particular friend of mine, presented me with a piece of cloth which afterwards went into a suit, so I can say in those instances my wool went into the suit of clothes.

Q. That was your own suit of clothes, made according to your own specifications and ideas, which I have no doubt are perfectly all right?

A. Yes.

General Appraiser McCLELLAND. Do you mean that the suit of clothes was made according to his own ideas or the cloth?

Mr. SHARRETTS. I don't know.

General Appraiser McCLELLAND. What do you mean by your question?

Mr. SHARRETTS. I mean that the purpose of tracing this lot was to get a suit of clothes according to your own ideas.

The WITNESS. Oh, no; he was pleased with his product and wanted to compliment me upon furnishing him the particular kind of wool which would make an attractive piece of goods.

Q. Of course, you do not dispute the fact that that wool is used eventually for a great many other purposes besides wearing apparel, do you?

A. For some purposes, yes.

Q. For a great many purposes?

A. Not a good many, but for some.

Q. Well, wool is used very extensively in the manufacture of blankets, isn't it?

A. That would be bed clothing.

Q. You are rather anxious to establish that word "clothing."

A. Well, you are particularly anxious that I should not; but go on.

Q. And it is used very extensively in the manufacture of felt?

A. Yes.

307 Q. Is not that wool also used very extensively in the manufacture of bunting for making flags?

A. My own impression is that bunting is made of mohair.

Mr. SHARRETTS. That is all.

By Mr. LAWRENCE:

Q. Mr. Blanchard, as a wool buyer or broker, have you handled mohair and alpaca?

A. No. I haven't—mohair to a limited extent.

Q. Camel's hair?

A. No.

Q. Having in mind the mohair that you did handle, to what class of mills did it go?

A. It went to the manufacture—in late years—of clothes, similar to palm beach clothes.

Q. Do you know of an article called "mohair noils"?

A. Yes.

Q. Do you know how noils are produced?

A. I do.

Q. By what process?

Mr. SHARRETTS. That is objected to. There can be no such question raised on cross-examination or on direct examination.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. By the process of combing. The fibers of wool or mohair, whatever they may be, are laid parallel and the short ends are dropped off as the wool goes through the machine, and those short ends are called noils.

Q. Mr. Blanchard, you stated in response to Mr. Sharretts' question that you made a distinction in the trade between clothing and combing?

A. Yes.

Q. Do those terms relate to grades of qualities or types or varieties, or what do they signify?

A. They relate entirely to use.

Q. Do you make any distinction between clothing and carpet wools?

Mr. SHARRETTS. That is objected to. That is a repetition.

General Appraiser MCCLELLAND. I will allow it.

A. Yes.

Q. In making that distinction what do you include in the clothing wool class?

Mr. SHARRETTS. That is objected to as a repetition, and has been answered three or four times.

General Appraiser MCCLELLAND. I will allow it.

A. Wools which can be put into clothing. A wool does not cease to be combing; a combing wool can be put into clothing and a clothing wool can be put into combing. If I should sell a lot of wool belonging to a dealer which had been entered as combing to a clothing mill, why it then becomes clothing wool.

308 General Appraiser MCCLELLAND. The character of the wool would not be changed would it?

The WITNESS. No, the character of the wool would not be changed.

General Appraiser MCCLELLAND. Nor its recognized name would not?

The WITNESS. No.

By Mr. SHARRETTS:

Q. Your main argument is that sometimes a comber will use a clothing wool; isn't that what you mean?

A. I meant more particularly that sometimes a woolen manufacturer would buy a combing wool.

Q. That is rather an exceptional proposition?

A. No, I don't think so.

Q. As a general rule, the combing wools go to worsted manufacturers and the clothing wools go to woolen manufacturers. That is a general condition.

A. Yes, that is the general condition.

By Mr. LAWRENCE:

Q. But Mr. Blanchard, whether the wool goes to the woolen mill or to the worsted mill for use in making clothing, under which classification would you put it, in the broad sense of the terms clothing and carpet wools?

Mr. SHARRETTS. That is objected to. There is no such thing as a broad sense of anything at issue.

Mr. LAWRENCE. Why not?

Mr. SHARRETTS. Because it is too indefinite, for one thing. I don't think that is a proper question.

General Appraiser McCLELLAND. The issue certainly is not, Mr. Lawrence, whether this is clothing or carpet wool.

Mr. LAWRENCE. Precisely.

General Appraiser McCLELLAND. No one that I have heard as yet claims that it is wool as has been used for carpets. The question is whether it is clothing wool, or what is commonly known in the trade as worsted wool.

Mr. LAWRENCE. Under the emergency provisions it is whether clothing or carpet wool.

General Appraiser McCLELLAND. I will allow the question.

(The question was read by the reporter.)

Mr. SHARRETTS. That is open to further objection. No one knows what the witness would understand by the term "broad sense of the terms."

General Appraiser McCLELLAND. Objection overruled.

A. Clothing

209 General Appraiser McCLELLAND. What do you mean by the "broad sense of the terms"?

The WITNESS. Well, in the sense that wool is made into cloth, and cloth implies clothing just as paint implies painting.

By General Appraiser McCLELLAND:

Q. In the generally accepted sense of the term is the character of the wool changed by its use? For instance, if a combing wool were used by a manufacturer in one instance to make clothing, is the character of the wool changed by so doing?

A. No.

Q. If it was combing wool when it was sold, it is still combing wool when it is used to make clothing; is that the idea?

A. I don't exactly get that idea.

Q. The question, I think, is comprehensible. I don't know how much difficulty you have in answering it. The manufacturer receives combing wool?

A. Yes.

Q. You sell him combing wool?

A. Yes.

Q. Now, he uses some of it for making worsted and some of it for making woolen uses that ultimately goes to clothing?

A. Yes.

Q. Is the character of the wool that he used for making worsted yarns and ultimately into clothing changed because of that particular use?

A. No, sir.

HARRY P. BRADFORD, a witness for the United States, was duly sworn, and testified as follows:

By Mr. HOPPIN:

Q. Where do you live?

A. Newton Center; 155 Lake Avenue, Newton.

Q. Your place of business?
A. 273 Summer Street, Boston.
Q. What is your business?
A. Wool business, wool commission; and wool merchants, I think you had better put it.
Q. Are you a member of the firm?
A. I am.
Q. What is the name of the firm?
A. Adams & Leland.
Q. Are you a member of the Wool Trade Association?
A. Yes, sir.
Q. How long have you been in this business?
A. About 37 years.
Q. And during that time have you bought and sold wool?
A. Yes, sir.
Q. To the trade in general?
A. All lines of trade, in general.
Q. To manufacturers?
A. To manufacturers, dealers, and all users of wool.
Q. And you have done this personally, have you, Mr. Bradford?
A. Yes, sir.
310 Q. Do you deal in domestic wools as well as imported wool?
A. More especially domestic wool, rather than imported wool. Our imported business is very small.
Q. Have you knowledge of imported wools from your experience?
A. Somewhat.
Q. But you chiefly deal in domestic wools?
A. Chiefly in domestic wools; yes, sir.
Q. Can you tell me in a general way the amount of wool which you deal in in the course of, say, the past year?
A. You mean the amount of wool that the firm has handled?
Q. Yes.
A. About twenty or twenty-five million pounds.
Q. Can you tell me, Mr. Bradford, from your experience, into what general classes wool is divided?
Mr. SHARRETTS. That is objected to. Is it a personal division, or by whom is he referring?
Mr. HOPPIN. I am asking from his experience.
General Appraiser MCCLELLAND. He is a very large dealer in wool, evidently. Of course the question contemplates an answer based upon your experience as a wool man. Objection overruled.
A. I think it is divided into practically two main classes, you might say.
Q. What are they, Mr. Bradford?
A. Wools that would be suitable to go into the making of clothes, or blankets, or anything that is worn, and wools that go into carpets—carpet wools, commonly known. They are two practically different businesses. The people that deal in carpet wools do not do

much in clothing wools and vice versa. Personally I hardly ever handle any carpet wools at all, and I know nothing about them.

Mr. SHARRETTS. I move to strike out the answer as not responsive, and it goes into conclusions of law and is merely a supposition. He started his entire answer with "I think."

General Appraiser MCCLELLAND. That is his answer. You can take care of that on cross-examination. I will let the answer stand.

Q. Are you familiar with the grades of wool which you handle?

A. Yes, sir.

Q. How are these grades designated, Mr. Bradford?

A. Well, wool is graded for its length of staple and fineness of fiber—more on the fiber than length—to-day.

Q. And what, in general, are they called? What terms are employed to designate those characteristics?

A. Well, fine, half blood, three-eighths blood, quarter blood, low quarter blood——

Q. Referring to length of staple, what would you say would be the trade name?

General Appraiser MCCLELLAND. What is the longer staple called?

311 The WITNESS. Why, in domestic wool, for instance in wools grown east of the Mississippi, we call them delaine. The wool grown west of the Mississippi, fine staple territories, Montana, or Utah, or wherever they happen to come from.

General Appraiser MCCLELLAND. Have you covered the short staple—what is that called?

The WITNESS. In wools grown west of the Mississippi we usually characterize those as fine and fine medium.

General Appraiser MCCLELLAND. When you are dealing with it in this great wool center?

The WITNESS. Yes, sir; we call it fine and fine medium, fine fine medium, Montana. East of the Mississippi we call it usually fine unwashed XX.

General Appraiser MCCLELLAND. Does that indicate the length of staple?

The WITNESS. Yes, sir.

General Appraiser MCCLELLAND. Would a wool man ordinarily know the length of staple by those terms?

The WITNESS. Yes, sir.

Q. Are those the terms which you use in your business transactions with dealers, manufacturers, and others?

A. Yes, sir.

Q. Has that been true since you have been in business?

A. Yes, sir.

Q. Mr. Bradford, what kind of mills do you sell to—to what class of mills?

A. Why, all kinds of mills using wool.

Q. Do you sell to woolen mills?

A. Yes, sir.

Q. Do you sell to worsted mills?

A. Yes, sir.

Q. In your sales to a worsted mill, what character of wool do you sell?

A. All kinds.

Q. As to length of staple, what character of wool do you sell?

A. Almost everything; there are very few wools that they won't use, in domestic wools.

Q. Is the same true of woolen mills with which you deal?

A. Yes, sir.

Q. Do you deal in alpaca or camel's hair?

A. No, sir.

Q. What are the determining factors in the purchase of wool?

A. Well, now, just what do you mean by that, what are the determining factors in the purchase of wool? Do you mean buying by the manufacturer, or as I would buy wool direct from the range?

Q. Well, the identifying characteristics of the wool; if a customer, for instance, should come into your office what would he look for?

A. Well, he would look for the price mainly, and then he would look probably for the strength and length and the fineness of the wool, depending wholly on what he wanted it for. One
312 order of wool might appeal to him, and we would be at a loss to know why it appeals to him, but he sees something in that wool which appeals to him.

Q. Would you say that the different mills would have different requirements?

A. I should say so.

Q. And on what basis would those requirements be made?

A. It is dependent wholly on what class of goods the mill wanted to make.

By Mr. SHARRETTS:

Q. Mr. Bradford, you used the terms "delaine" and "staple." They both refer to the combing wools, do they not?

A. They are known as combing wools; yes, sir.

Q. You used the various blood terms such as mentioned, as fine, half blood, three-eighths blood, quarter blood, etc.

A. Yes, sir.

Q. Those terms refer to the fineness of the wool, do they not?

A. Yes, sir.

Q. And that is the diameter of the staple.

A. Yes, sir.

Q. That is the only significance those terms standing alone have?

A. The grade, as we call it—the grade of the wool.

Q. That is, the fineness of the wool?

A. The fineness of the fiber.

Q. Now, which of these qualities of fineness—take for instance, the half blood. There are short fibers in half blood and long fibers in half blood, is that correct?

A. Yes.

Q. As a general proposition, the short-fibered half blood would go to the woolen system of manufacture, wouldn't it?

A. No; I can't make that statement. I have sold all I have made this year to combing mills.

Q. Well, the long staple—the long fibers—they, as a general proposition, go to the worsted system?

A. Yes, sir.

Q. Of course, standing alone the term "half blood" would not indicate whether it was a long fiber or a short fiber, would it?

A. No, sir.

Q. Therefore, the short fibers are indicated generally with the term "clothing," are they not?

A. Yes, sir.

Q. And the long fiber described as combing or staple or delaine?

A. Not delaine.

Q. The delaines, as I understand it—correct me if I am wrong—are a fine grade of territory combing wools, is that correct?

A. No, sir.

Q. What are they?

A. Fine grade of wools grown east of the Mississippi River.

Q. But it is a combing wool?

A. Yes, sir.

313 Q. Now, through your experience in the trade and in dealing with other wool concerns you have constantly been confronted by the terms "clothing" and "combing," have you not?

A. Not to a great extent; for 20 years perhaps, yes.

Q. Well, you have had occasion recently, in the past few years, confining yourself to the past five years, say, have had occasion to read the various quotations in the market and papers?

A. Yes.

Q. And trade journals?

A. Yes.

Q. Government publications?

A. Yes.

Q. Now, don't they constantly use, even to-day, the terms "clothing" and "combing"?

A. They do.

Mr. HOPPIN. I object. I don't see that that has anything to do with the case here in issue.

General Appraiser MCCLELLAND. It is proper cross-examination. This witness's testimony is very different from any other witness's that has been on the stand, but I think they are justified in full cross-examination.

Mr. HOPPIN. I speak—I think it is going pretty far afield when he asks questions of that kind in this issue.

Q. And as those terms are used and as they have been used constantly throughout your experience, have not clothing wools meant the shorter-fibered wools in each quality of fineness?

A. Surely.

Q. And the combing wools the longer-fibered wools in each quality?

A. Yes.

Q. Now, I think you stated that you sold all kinds of wools to worsted mills and all kinds of wools to woolen mills, is that correct?

A. I don't think I made quite as broad a statement as that, did I?

Q. I don't want to lead you beyond what you said.

A. No; practically all kinds of wool to the different mills.

Q. Well, did you mean that you sold all of the different kinds to the worsted mills and all of the different kinds to the woolen mills?

A. Yes.

General Appraiser MCCLELLAND. That being the general rule of your sales, or just exceptional?

The WITNESS. There are exceptions in all cases, but as a general thing many of our wools go to woolen mills, or worsted mills, taken from the same piles. We sell some to the worsted mills and some to the woolen mills.

General Appraiser MCCLELLAND. Regardless of the length of fiber?

The WITNESS. Regardless of the length of fiber.

314 Q. Will you look at these exhibits here, Nos. 1 to 13? Have you examined those?

A. Yes, sir; in a general way.

General Appraiser MCCLELLAND. Have you examined them enough to be able to tell what they are?

The WITNESS. Yes.

Q. Now, have you dealt in wools that correspond to these wools that you have examined?

A. Yes, sir.

Q. Have you sold those wools to woolen mills?

A. There are some there that would go to woolen mills, and that are also suitable for worsted purposes.

Q. Now pick out those that you think would go to a woolen mill.

A. In certain instances a woolen mill could use any one of them.

Q. They could use them?

A. They could use them.

Q. I am speaking now of the general practical custom.

A. As a general practical custom I would say those are all clothing wools.

Q. And they could all go into the worsted system?

A. They could all go into the worsted system.

Q. No woolen mill would be in the market for wools such as you have looked at there?

A. If they were forced to use them they could use them. Now a great many of those coarse wools this past year have gone to the woolen trade.

General Appraiser McCLELLAND. We are not talking here about the exceptional use, but the general use.

Q. Would, ordinarily, I mean.

A. I should say no, not ordinarily.

Q. Will you look at Illustrative Exhibit "C"? Would that be a wool that would ordinarily be sold to a worsted mill?

A. I should say not, ordinarily.

Q. That would go to a woolen manufacturer, ordinarily?

A. Ordinarily, yes.

Q. That is a clothing wool?

A. It is a clothing wool but it can be combed.

Q. Well, it is possible? We are trying to confine ourselves now to what is practical, general, common custom.

A. That would be commonly called a clothing wool, I think.

Q. And the others would be commonly called combing wools?

A. Yes.

Q. Or staple wools?

A. Yes.

General Appraiser McCLELLAND. Would any of these others be commonly called clothing wools?

The WITNESS. No sir, I don't think they would be.

Q. That is, Exhibits 1 to 12?

A. Nos. 1 to 12 or 13 there.

315 By Mr. HOPKIN:

Q. Mr. Bradford, will you look at Exhibit 13 again and state whether, after examining Exhibit 13, will you state to what class of mills that would generally go?

A. That is a pretty poor lot of wool. It is very tender. It would be a bad wool to comb. It is more of a clothing wool, I should call it.

General Appraiser McCLELLAND. To what class of mills would it generally go?

The WITNESS. I think it would go more to a clothing mill.

Q. Are there any wools in there which are commonly used for carpets?

A. No, sir; I don't see any there. I know very little about carpet wools, but I should not think any of those would go into carpets.

Q. Can you tell me, from your experience, that wools of a similar character—to what use these wools are generally put?

Mr. SHARRETTS. That is objected to, as indefinite.

General Appraiser McCLELLAND. I will allow it.

A. Why, for clothing, in a broad sense; to make clothing, blankets, or similar articles, for wearing apparel.

General Appraiser McCLELLAND. You mean its ultimate use?

The WITNESS. I mean its ultimate use, yes.

Q. Can you tell me, Mr. Bradford, as to whether the price is the determining factor under certain conditions, or not? When is price a factor in the use of wools? Can you tell me when price is a factor in the use of wools?

Mr. SHARRETTS. That is objected to. Yes or no.

General Appraiser McCLELLAND. Objection overruled.

A. It is always a factor.

Q. Can you tell me if these wools which you have examined, Exhibits 1 to 12, could profitably be used for woolen purposes, if the price was right?

A. Surely.

Mr. SHARRETTS. That is objected to, as leading. It is a double question anyhow.

General Appraiser McCLELLAND. I will allow it. Objection overruled.

Mr. HOPPIN. That is all.

By Mr. SHARRETTS:

Q. Mr. Bradford, have you ever been connected with the firm of Brown & Adams?

A. Yes, sir.

Q. What was your connection with that firm?

A. I was first employed as a salesman and later I was a member of the firm.

316 Q. Is there any relationship between that firm of Brown & Adams and your present firm?

A. A few years ago the firm separated and two partners took——

General Appraiser McCLELLAND. He is speaking in the present tense.

A. (Continuing.) No, sir, there is no relationship to-day. The firm of Brown & Adams is still in existence, in a manner.

Q. Are you personally connected with the firm in any way?

A. Yes, sir.

Q. You are at the present time?

A. Yes, sir.

Q. What is your connection at the present time with Brown & Adams?

Mr. HOPPIN. I don't think that is a fair proposition.

A. I don't know what you are driving at, I am sure.

General Appraiser McCLELLAND. Are you a partner?

The WITNESS. In Brown & Adams; yes, sir.

Q. I show you a pamphlet here and refer to page 4, Mr. Bradford. Do you recognize what that is?

A. Yes, it is one of the Government auction catalogues.

Q. And to certain items specified there against the name of Brown & Adams?

A. Yes, sir.

Q. Do you recognize what they are?

A. Yes, sir.

Q. What are they?

Mr. HOPPIN. I object to that as having nothing to do with the case.

General Appraiser MCCLELLAND. What do you expect to prove by this?

Mr. SHARRETTS. If your honor please, I just want to show how this firm sells its wool.

General Appraiser MCCLELLAND. Is he responsible for the catalogue?

Mr. SHARRETTS. Those are the terms that his own firm are using.

General Appraiser MCCLELLAND. Did you have anything to do with the making up of that catalogue or the classifications that you find on that page?

The WITNESS. I had nothing to do with the making up of the catalogue in any shape, form or manner.

General Appraiser MCCLELLAND. Do you recognize the classifications as those used by your firm?

The WITNESS. We don't use those classifications. Those are the Government classifications.

General Appraiser MCCLELLAND. Do you mean to say that your firm had nothing to do with the making of them?

317 The WITNESS. We would not use those terms that are used here, in selling or buying wool.

Q. Didn't you furnish to the Government the data under which they made that classification?

A. Those are our wools, but they put it in different terms than what we put it in.

General Appraiser MCCLELLAND. Did you furnish the data to the Government that is printed there?

The WITNESS. No, sir.

Q. Didn't your firm furnish that to the Government?

A. I don't think we did.

Q. You don't know how they got the information?

Mr. HOPPIN. If your Honor please, there is some limitation to this cross-examination. I object.

General Appraiser MCCLELLAND. Yes. Objection sustained.

Mr. SHARRETTS. I offer this in evidence and call attention to page 4.

Mr. HOPPIN. I object to it as incompetent, irrelevant, and immaterial.

General Appraiser MCCLELLAND. Objection sustained.

Mr. SHARRETTS. I ask that it be marked for identification.

(The document was marked "E for identification.")

CHARLES W. RYDER, a witness for the United States, was duly sworn, and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Ryder, what firm are you associated with in business?

A. Ryder, Brown & Co.

Q. Where is your place of business?

A. 51 Melcher Street, Boston; also I am the vice president of Crimmins & Peirce, 281 Summer Street, Boston.

Q. And what is the business of Crimmins & Peirce Co.?

A. In the wool business.

Q. What is the business of Charles W. Ryder?

A. Ryder & Brown are in the wool business.

Q. How long have you been in the business?

A. Since 1894.

Q. Do you handle carpet wools?

A. Yes.

Q. Clothing wools?

A. Yes.

Q. Imported and domestic?

A. Yes.

Q. About what quantity annually do you import?

A. Well, that is liable to vary; no stated quantity that we could say at any time.

318 Q. Does the quantity that you handle annually of imported wools—would it be measured in thousands of pounds or in millions of pounds?

A. Millions.

Q. With respect to domestic wools what would be the fact?

A. Millions.

Q. What are the broad classes of wools that you handle?

Mr. SHARRETTS. That is objected to as leading.

Q. With respect to their general uses.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. That is objected to as leading, "with respect to general uses." There is nothing to indicate——

Mr. HOPPIN. I have got to indicate its use rather than grade.

General Appraiser MCCLELLAND. I think the last part of your question was all right, if you had let it stand. I will sustain the objection as to the last part. Strike out "with respect to their general uses."

A. We handle carpet wools and clothing wools—wools for making clothing.

Q. Now, are those wools, as clothing wools and carpet wools, subdivides into other classifications, or qualities, or grades?

Mr. SHARRETTS. The witness did not testify about that. He said that he handled carpet wools and wools that are used in making clothing. The question stops short.

General Appraiser MCCLELLAND. He is testifying himself. You can take care of your end of it. If you don't like it, make a note of it. The other witnesses turned all around Robin Hood's barn, but finally got home.

Mr. LAWRENCE. I will appreciate it if counsel will take a position a little farther back from the witness.

Mr. SHARRETTS. My space is rather limited.

A. Yes.

Q. Are you familiar, Mr. Ryder, with the trade designations of the various grades of wool that you deal in?

A. Yes.

Q. Are you familiar with the identifying characteristics of wool, which enable you to distinguish them, as of any grade?

A. Yes.

Q. Will you please examine Exhibits 1 to 13, on the table?

(Witness examines exhibits mentioned.)

Q. You will not that there is a No. 10 and 10–A, which accounts for the fact that there are 14 exhibits on the table. Have you completed your examination of the exhibits?

A. Yes, sir.

Q. Have you dealt in wools possessing characteristics shown by those exhibits?

A. Yes.

Q. How many years have you been familiar with that class?

A. I don't know just what you mean by "familiar."

319 Q. As a dealer or wool merchant, how long have you been familiar with wools of the types of these exhibits?

A. We have been buyers and sellers of that kind of wool since 1894.

General Appraiser McCLELLAND. So that you can testify. How long have you been able to classify them?

The WITNESS. I don't know just when that date was.

General Appraiser McCLELLAND. About.

Q. Bearing in mind what the broad classes of wool, about which you testified, clothing and carpet, into which class would these wools fall?

Mr. SHARRETTS. That is objected to, as leading.

General Appraiser McCLELLAND. Objection overruled.

A. Clothing.

Q. Clothing what?

A. Used for clothing.

Q. I ask you which class it would fall into.

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. He has answered it.

Q. Into which class would they fall?

General Appraiser McCLELLAND. Into that class?

A. You mean into clothing wool or carpet wool?

Q. Yes.

A. It is all used for clothing.

Q. I ask you which class clothing wools are and carpet wools?

Mr. SHARRETTS. That is objected to. The witness has answered the question.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. It seems to me that the answer "used for clothing" is not sufficient.

General Appraiser McCLELLAND. I have allowed you to ask him twice and he gave the same answer both times.

Mr. LAWRENCE. Am I not entitled to a correct answer?

General Appraiser McCLELLAND. I am assuming that he has answered correctly.

Mr. LAWRENCE. I am assuming otherwise and believe otherwise.

Q. Are you familiar with the uses of the wools which you deal in?

A. Yes.

Q. With what class of mills do you have dealings in wools?

A. All kinds.

Q. Will you name them, please?

A. Worsted mills and woolen mills, mohair mills and carpet mills.

Q. Are you familiar with the characteristics of wool which the woolen and worsted mills particularly desire?

A. Yes.

320 Q. Are you prepared to say whether, from your own knowledge, whether any qualities of wool are used interchangeably by woolen and worsted mills?

A. Yes.

Q. What is the fact?

A. Why, a woolen mill can use practically all.

General Appraiser McCLELLAND. It is not a question of what they can do.

A. Do use any kind of wool. Worsted mills use practically combing wool, and what used to be known in the trade as clothing wool, which the dealers used to put up as a clothing wool. They are combing those wools to-day; so they use practically everything, worsted mills or woolen mills, except very short six months' stuff.

Q. Yes; but have you in your experience ascertained whether any given quality of wool that you have dealt in has been used interchangeably by woolen and worsted mills?

A. Yes.

Q. Is that an uncommon thing?

A. Not to-day.

Q. Has there been any change in the quantity or qualities of wool during your experience which are adapted and used by combers?

A. Yes.

Q. In what respect has that change been?

A. They are are using shorter wool than ever before. When I say "ever before" I mean in the past year. They are using more short wool.

Q. How are they able to do that?

General Appraiser McCLELLAND. How long since that change took place?

A. Of course it has been increasing in the past 5 or 10 years. Fifteen or 20 years ago they did not use so much. That is possible by using the French combs instead of the Bradford or English combs.

Q. Is the price at which wools may be sold at a profit in any sense a determining factor in its use, either by woolen or worsted mills?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. Objection overruled.

A. Yes.

Q. Would a difference of 15 cents a pound determine whether a certain grade of wool could be profitably used by one or the other mills?

A. Yes.

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. I can't see that it is immaterial. It is leading.

Mr. SHARRETTS. Also as leading.

General Appraiser McCLELLAND. Objection sustained.

Mr. SHARRETTS. I ask to have the answer stricken out.

321 General Appraiser McCLELLAND. Objection sustained on the ground that it is leading.

Mr. LAWRENCE. The objection came in after the answer, your honor?

General Appraiser McCLELLAND. I know.

Mr. LAWRENCE. Exception.

Q. Would 30 cents a pound determine whether a wool could be used profitably by a woolen or worsted mill?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser McCLELLAND. Objection sustained.

Q. What difference in price, Mr. Ryder, would be sufficient to determine whether a wool would go to the woolen or worsted mill at a fair profit?

A. A very small difference in price.

Q. Within what range of cents, we will say?

A. Well, 2 or 3 cents.

Q. Having in mind, Mr. Ryder, Exhibits 1 to 13, inclusive, please state whether, in your experience, such wools have been commonly used in carpet making.

A. Not commonly.

General Appraiser McCLELLAND. Have you sold any such wools for use in carpet making?

The WITNESS. One lot.

Q. Will you tell us, looking at Illustrative Exhibit "D," Mr. Ryder, state whether it is of a kind or quality that you are familiar with?

A. Yes.

Q. Do you know what such wool is adapted for?

A. Yes.

Q. What?

A. Carpets.

Q. How would such wool be classed, having in mind the particular classes of wool?

A. As carpet wool.

Q. Did you ever know of such wool to be used in clothing?

Mr. SHARRETTS. That is objected to as immaterial. That has nothing to do with the case—the use of the wool.

General Appraiser MCCLELLAND. The witness has stated that it is known as carpet wool.

Mr. LAWRENCE. I will withdraw the question.

Q. Mr. Ryder, how are wools graded and designated in your business dealings? How do you identify your various kinds and qualities of wools?

A. By grades.

Q. Taking the foreign wools that you deal in, how are they graded—by what designations?

A. Usually by figures.

Q. Figures such as——

A. 36's, 40's, 44's, 46's, 60's, 56's.

Q. And what do those counts imply as a matter of fact?

A. Quality.

322 Q. And the quality in turn depends upon what?

A. The size of the fibers.

Q. Anything else?

A. That is about it.

By General Appraiser MCCLELLAND:

Q. Do you mean the length when you say the size?

A. No; the size of the fiber.

Q. I see, the diameter.

A. Yes.

By Mr. LAWRENCE:

Q. Then, in the domestic wools, what are the terms employed to designate the different grades?

A. Usually a fine staple, half blood, three-eights, quarter, common, and braid, and low quarter.

Q. What do those various terms imply?

A. Quality.

Q. And what in turn does the quality depend upon?

A. The size of the fiber.

Q. You have said that these are terms commonly used between buyer and seller, are they not, in designating the wools?

A. Yes.

Q. You state that you are familiar with mohair, I believe?

A. Yes.

Q. Deal in it?

A. Yes.

Q. In substantial quantities?

A. Yes.

Q. Do you know how it is manipulated in preparing it for yarns?

A. Yes.

Q. Have you seen it done?
A. Yes.
Q. How is it treated?
A. It is usually combed.
Q. Do you know the common uses to which mohair yarns are ultimately put?
A. Yes.
Q. Have you seen such uses employed?
A. Yes.
Q. What are they used for commonly?
A. For braid, linings, plushes, for all sorts of knitted fabrics, hosiery, and sweaters, and things of that sort.
Q. Are you familiar with alpaca?
A. Yes.
Q. Are you familiar with it in the same sense that you are with mohair?
A. Yes.
Q. How is it manipulated in preparing it for use?
A. It is usually combed.
Q. And what are its common uses?
A. Practically the same as mohair.
Q. Are you familiar with camel's hair, in the trade sense?
A. Yes.
Q. Have you dealt in it to some extent?
A. Yes.
Q. Do you know the process by which it is converted into yarns and fabrics?
A. Yes.
323 Q. How is it treated in the process of preparing it for use?
A. Most of the lower qualities are combed. Sometimes the finer quality, No. 1, is used for clothing, knitters for sweaters, golf stockings, or things of that type, and scarfs.
Q. Is it combed, or carded?
A. Usually the fine is carded. The lower qualities are combed and sometimes prepared in a machine they call a preparing machine.
Q. Are you a direct importer of wool?
A. Yes.

By Mr. SHARRETTS:

Q. Mr. Ryder, you state that there were various count terms used in connection with various wools, such, I presume, as from 90 down to 33; is that correct?
A. No. I think not.
Q. Well, you state that numbers are used?
A. Yes.
General Appraiser MCCLELLAND. Give the maximum and minimum, as you understand them.
The WITNESS. Usually 36 at the bottom, although they do have 32 and 64–70, and some 80's.

Q. And in the domestic wools blood terms are used to indicate the quality, is that correct?

A. Yes.

Q. Now, under both of these statements, the numbers on the one hand and the blood terms on the other, they refer to the quality or fineness of the wool, is that correct?

A. Yes.

Q. By fineness you mean the diameter of the fiber?

A. Yes.

Q. Now, each of these qualities in turn is divided according to length of staple, is that correct?

A. Yes.

Q. Into clothing on the one hand and combing on the other?

A. Not necessarily; 64's could be long or short, either one.

Q. Yes; but if it was short, it would be a clothing wool, and if long it would be a combing wool?

A. Not necessarily. It all depends on how short.

Q. Well, at some point of shortness the wool would be clothing wool, and the longer staple would be termed "combing"?

A. Yes.

Q. And that same division exists with respect to the domestic wools, using the blood terms, and divide the quality or fineness, into clothing and combing?

A. Yes, sir.

Q. I suppose "staple" is sometimes used in the same sense with combing?

A. Yes.

Q. Now, as a general proposition, the combing wools go to the worsted system of manufacture, is that correct?

A. That is the general rule.

Q. I am speaking in terms of the general rule.

A. Yes.

324 Q. And the short lengths to clothing wools as a general rule, and clothing wools as a general proposition go into the woolen system, is that correct?

A. Not to-day.

Q. I am speaking, you understand, as a general condition. What kind of wools, as a general proposition, does the woolen system use?

A. The woolen system usually buy the shortest wools that is possible, on account of the price.

Q. That is the clothing wool, isn't it?

A. Yes.

Q. As a general proposition the worsted system takes the combing wools?

A. Yes.

Q. Now, you have been in touch with the trade for a number of years, haven't you?

A. Yes.

Q. Have you ever heard in commercial transactions or in commercial usage in connection with the trade, the term "clothing wool" ever used to have any other meaning than the short staple wools, which you state go to the woolen system of manufacture?

A. A great many wools are called clothing that are all combing lengths. Clothing is rather a broad term, and you will find a clothing mill, or woolen mill, buying wool that really is not clothing. On the other hand, you will find worsted mills buying what is called strictly clothing.

Q. Sometimes a worsted mill will buy clothing wool?

A. Yes, sir.

Q. Sometimes clothing wools will be combing wools?

A. Yes, sir.

Q. Is it not some particular lot that could be broken up to meet other needs?

A. Not necessarily. We don't have to break them all. We only break the very long staple wools.

Q. Isn't it a fact that the longer staple wools interfere with the operation of the machines used in the woolen mills?

A. Yes; that is the reason for breaking them up.

Q. You have examined these exhibits, I think, here have you not?

A. Yes.

Q. Some of those you found to be combing wools, didn't you?

A. Yes.

Q. Would those be wools that would ordinarily be sold to a woolen system of manufacture? I am speaking of the general custom and practice.

A. The practice is to-day for woolen mills to buy most anything suitable for their clothing.

General Appraiser McCLELLAND. That is not what he asked.

(The question was read by the reporter.)

A. The general practice is so broad to-day that it is difficult to say.

325 Q. Would they be sold more to the woolen people or more to the worsted people?

A. More worsted people would buy than woolen people, at a price.

Q. Now in your experience in the trade, dealing with your fellow members in the trade, throughout your experience these exhibits here, that you have described as combing wools, they would never be known among those people as clothing wools, would they?

A. The farther sample over there. [Indicating.]

General Appraiser McCLELLAND. No. 13.

A. It would be very difficult to call that a combing wool.

Q. That is Exhibit 13. But, leaving out Exhibit 13, these other exhibits, 1 to 12, they would not be regarded in any trade that you have come in contact with as clothing wool?

A. Not in the strict term of clothing wool.

General Appraiser McCLELLAND. As the term is commonly understood among people that know anything about what they are, would they not be included in the term "clothing wool"?

The WITNESS. No.

Q. Will you please look at Illustrative Exhibit "D." Have you ever sold wool of that kind, to be eventually made into wearing apparel?

A. You hardly call blankets wearing apparel; but they use it for blankets.

Q. Have you ever sold any carpet wools to be eventually made into wearing apparel?

A. Yes.

Q. Of course, these wools are evidently used for other purposes besides making wearing apparel, are they not?

A. Which wools?

Q. These wools with respect to which you have been testifying.

General Appraiser McCLELLAND. Do you mean Exhibits 1 to 12?

Mr. SHARRETTS. Exhibits 1 to 12.

The WITNESS. Just ask that question.

Q. They are, of course, used for other purposes than for the manufacture of wearing apparel, are they not?

A. Do you mean blankets and things of that sort?

Q. Yes.

A. Yes; they are used for blankets.

Q. And felts?

A. Yes.

Q. And plushes?

A. Plushes are usually mohair and stuff of that kind.

Q. Plushes, of course, are made of wool also, are they not?

A. There is very little wool plush that I know of. It is sometimes cotton.

Q. You testified with respect to the use of mohair—that is, the finer use of it. That is used satisfactorily for making plushes, is it not?

A. Yes.

326 Q. These plushes are used, as a rule, for the seats in railroad trains?

A. Very largely, although they are used for furniture plush and curtains, and——

Q. Automobile trimmings?

A. Plushes; sometimes as lining for the upholstery in the automobile.

Q. The tops of automobiles, are they also?

A. Sometimes, yes.

By Mr. LAWRENCE:

Q. Mr. Ryder, in stating that Exhibits 1 to 13 were used in the manufacture of blankets, felts, plushes, did you mean to imply that those are the chief uses of such wools?

A. I don't believe I included them in plushes. Blankets and felts, yes; but I don't know of wool plushes being made.

Q. Well, confining the question to blankets and felts, did you mean to imply that wool such as Exhibits 1 to 13 are chiefly used in the manufacture of blankets and felts?

A. No.

Q. What would you say is the chief common use?

A. Clothing.

Q. Then you spoke of mohair being used in the making of automobile linings and other equipment?

A. To upholster the seats.

Q. Did you mean by that that that is the chief use of mohair?

A. No.

Q. What do you understand to be the chief use of mohair?

A. Plush, and linings for cloths, such as linings for coats, braids, and stuff of that kind.

Q. Do you know whether it is used in the manufacture of Palm Beach suitings to any extent?

A Very largely.

Q. You testified to a certain use of carpet wool for clothing. I want to know if that is a common or an exceptional use.

A. Very common.

Q. For what particular type?

A. It is usually in the type known as homespuns and overcoatings; a great many, I think, to-day, and sports suits.

Q. How long has it been true that that it is so used?

A. Ever since I have been in the trade.

Q. Now, will you please tell us where carpet wools are commonly produced—in what countries?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. As a piece of information we will let it go. Objection overruled.

A. India, Asia, China, some parts of Europe, and South America.

Q. Do you know if they are produced to any substantial extent in the United States?

A. A very small portion are.

327 Q. About what percentage, would you say?

A. I don't know. I should think 2, or 3, or 5 would cover it easily.

Q. Are carpet wools always combed in preparing them for their ultimate use?

A. No.

Mr. SHARRETTS. That is objected to as leading.

Q. I will put it this way: What manipulation is carpet wool subjected to in converting it into yarns?

A. Both combed and carded.

Q. Is it all combed?

A. No.

General Appraiser McCLELLAND. Now, unless it is the purpose to show that clothing wool is known as carpet wool, I see no purpose at all in this examination.

Q. Will you please look at Illustrative Exhibits "E" and "F" before you? Do those samples exhibit characteristics of wools that you are familiar with?

A. Yes.

Q. Have you dealt in such wools?

A. Yes.

Q. To what class of mills are they sold?

A. Mills making fine clothing.

Q. Do you know whether they are sold as fine to woolen or worsted mills, or both?

A. Both.

Q. They go to both?

A. Yes.

Q. Now, recalling to your mind Exhibits 1 to 13, inclusive, and having in mind the two broad classifications of wool to which you testified, carpet wools and clothing wools, will you please tell us whether Exhibits 1 to 13 would be included or excluded in the broad sense of clothing wools?

Mr. SHARRETTS. That is objected to. I don't think it is fair to lead the witness into exactly what he wants him to say.

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. They would be included.

General Appraiser McCLELLAND. What do you mean by the "broad sense"?

The WITNESS. Used for clothing.

General Appraiser McCLELLAND. You have reference to use?

The WITNESS. To the use for clothing.

General Appraiser McCLELLAND. You have no reference to what the ordinary wool man would call clothing wool?

The WITNESS. No.

Mr. LAWRENCE. That is all.

Mr. SHARRETTS. That is all.

Mr. HOPPIN. The Government has no more witnesses at this particular moment. We would like to call your honor's attention to rule 22, in regard to the admission into the report in this case of the Cordingley case, No. 946637. [Reads rule 22.]

328 General Appraiser McCLELLAND. I don't think I admitted it.

Mr. HOPPIN. Yes; over our objection.

Mr. SHARRETTS. You made it a part of the present record upon counsel's admission that the wools were of the same character.

General Appraiser McCLELLAND. Of the same character and count.

Mr. HOPPIN. You admitted it over our objection that there was nothing to show that they were the same wools.

Mr. SHARRETTS. We will appeal to the record on that.

Mr. HOPPIN. Rule 22 reads as follows [reads]:

"RULE XXII. Where a question of the classification of imported merchandise is under consideration for decision by any one of the boards and a decision has been previously made involving the classification of goods of substantially the same character, the record and testimony taken in the later case may, within the discretion of the board, be admitted as evidence in the pending case on motion of either the Government or the importer or on the board's own order: *Provided*, That either party may have any one or more of the witnesses who testified in such case summoned for reexamination or cross-examination, as the case may be. This rule shall, furthermore, apply to the printed records which may have been acted on by the courts in the case of appeals taken from the decisions of the board."

I would like to call your honor's attention to the fact that this rule provides that the decision must have been previously made, and that not being the case in the Cordingley record, we object to it.

General Appraiser MCCLELLAND. I assumed that the case had been decided.

Mr. HOPPIN. No, sir.

General Appraiser MCCLELLAND. I thought that was before Judge Hay, and decided by Judge Sullivan.

Mr. HOPPIN. No, sir; there has been no decision in the matter. We therefore renew our objection.

General Appraiser MCCLELLAND. I certainly ruled on that assumption. I assumed that that was the case that was tried before Judge Hay and decided in the summer by Judge Sullivan and submitted to me for concurrence on my return from Europe.

Mr. HOPPIN. That was not the protest. The protest your honor has in mind was not the protest in this case.

General Appraiser MCCLELLAND. Of course, I am quite familiar with the provisions of the rule which requires that a record that is desired to be consolidated must have been in a case already decided. I misunderstood the situation and I asked Mr. Lawrence some questions in the course of the discussion, that led me to misunderstand him, and which led me to think it was the case that I had in mind, that had already been decided.

329 Mr. HOPPIN. The introduction of this record was objected to by Mr. Lawrence.

Mr. SHARRETTS. I think the rule, under the wording of that rule that it does refer to where there have been decisions, but I believe the board has it in its own discretion——

General Appraiser MCCLELLAND. I have in mind, as I have stated, that the case that was tried before Judge Hay and an opinion rendered by Judge Sullivan, in which I concurred, was the one referred to.

Mr. HOPPIN. In view of having called your honor's attention to the fact that no decision has been made in this case, I ask your honor to reconsider the ruling.

General Appraiser MCCLELLAND. Yes; I think on the state of facts that are now presented I will have to change my ruling.

Mr. HOPPIN. Your honor will change your ruling in this case, admitting the Cordingley case, No. 946637, etc.

Mr. SHARRETTS. We won't urge that. I don't think it is very important anyhow.

General Appraiser MCCLELLAND. Is the Government through for the time being?

Mr. HOPPIN. Yes.

General Appraiser MCCLELLAND. What is the disposition now? The case is to be continued to New York?

Mr. HOPPIN. To New York.

General Appraiser MCCLELLAND. Will it be set for any particular time?

(The case was adjourned to New York docket, for October 17, or a later date, as may be agreed upon by and between counsel.)

Board of United States General Appraisers

In the Matter of Protests 942570, 941808, 942569, 952179 of Stone & Downer Co.; protest 950402 of Lowe, Donald & Co.; protest 951310 of John A. Conkey; protest 953320 of J. A. Karnheim.

NEW YORK, *October 24, 1922.*

Before Board 1

Present: General Appraiser McClelland, General Appraiser Sullivan, General Appraiser Brown.

Appearances: Thaddeus S. Sharretts (by Edward P. Sharretts, Esq.); Waterhouse & Lockett (by Wm. E. Waterhouse, Esq., and Jos. F. Lockett, Esq.), counsel for the importers, John Fran-
330 cis Strauss, Esq., and Geo. F. Puckhafer, Esq., associate counsel; Wm. W. Hoppin, Esq., Assistant Attorney General (Chas. D. Lawrence, Esq., and Harry M. Farrell, Esq., special attorneys), for the United States.

JOSEPH SEAVER, a witness for the United States, was duly sworn, and testified as follows:

By Mr. LAWRENCE:

Q. Mr. Seaver, what is your business?

A. Examining wool at the port of New York.

Q. How long have you been an examiner of wools?

A. This is my seventeenth year.

Q. Have you, during that time, examined practically all wool imported at this port?

A. I have.

Q. Have you had any experience with wool prior to the time that you became examiner?

A. I have.

Q. Where?

A. At Boston.

Q. For how many years?

A. About 30.

Q. How many years, altogether, have you been familiar with wools?

A. Forty-nine.

Q. And has your experience brought you in contact with practically all varieties of wool imported into the United States?

A. It has.

Q. Have you had any contact with domestic wools?

A. I have.

Q. Will you please relate your experience in the wool business prior to the time that you became an examiner?

Mr. SHARRETTS. That is objected to as immaterial, prior to 17 years ago.

Mr. LAWRENCE. It all goes to his qualifications, your honor.

General Appraiser MCCLELLAND. Unless you admit his qualifications I think he has a right to qualify him to the fullest extent, unless you admit his qualifications as a wool expert.

Mr. SHARRETTS. I have no objection.

Q. You may answer the question.

A. I was first shipping and receiving clerk.

Q. For how many years?

A. About seven months.

Q. Proceed.

A. Then clerk in the main office.

Q. For how long?

A. That ran along about a year and a half, possibly two years. Then I went west, in fact all over the United States, soliciting consignments.

Q. Consignments of what?

A. Of wool. Then that continued for about seven years, until 1883. Then I was buying wool and selling wool until 1906, and after that I came here.

331 Q. Have you had any experience in the grading or sorting of wools?

A. I have.

Q. How much?

A. I have had a great deal of experience in grading : quite a little experience in sorting.

Q. Are you familiar with the mechanical processes to which wool is subjected in preparing it for its ultimate use?

A. In a very, very general way, yes.

Q. How have you acquired that knowledge?

A. By visiting every stage that it is put through in handling wools from the low condition to the finished product.

Q. Did you do that before you became examiner of wool?

A. I did.

Q. Have you done it since you became examiner of wool?

A. I have.

Q. Have you done it frequently or otherwise?

A. Frequently.

Q. In what States have you visited mills for the purpose of seeing the processes employed?

A. Mills in all the New England States, New York State, New Jersey, Missouri, and California.

Q. Have you had any experience in any foreign country?

A. Scotland.

Q. What was the nature of your inquiries there?

Mr. SHARRETTS. That is objected to as immaterial inquiries in foreign countries. I can't see that that has anything to do with it, and has no bearing on any question here.

General Appraiser MCCLELLAND. Haven't you got the question of foreign wools up here?

Mr. SHARRETTS. Yes, your Honor, but it is in this market.

General Appraiser MCCLELLAND. As far as classification is concerned, it must be based upon American usages and not foreign usage, but he is now getting his experience.

Mr. SHARRETTS. In foreign countries.

General Appraiser MCCLELLAND. He would not be any the less qualified as a wool expert simply because he learned some of his knowledge abroad. Objection overruled.

Mr. SHARRETTS. Exception.

A. I went over to Scotland with a manufacturer running mills in the State of Maine as his guest, when he went to visit the old country, and he took me through several of the mills in the section that he was born in.

Q. What year was that, Mr. Seaver?

A. 1894.

Q. Did you visit the mills there?

A. I did.

Q. And did you observe the character of the machinery used and the operations employed?

A. I followed it very closely.

332 Q. Do you know, as a matter of fact, if the same machinery is used abroad in textile mills as is used here?

Mr. SHARRETTS. That is objected to as immaterial. That has nothing to do with his qualifications.

General Appraiser MCCLELLAND. He asked him if he knows. He can answer yes or no.

Q. Do you know? Your answer is yes or no, whether the machinery used in the textile mills you visited abroad was the same as is used in the textile mills in this country?

A. It is my judgment that they were.

Mr. SHARRETTS. I move to strike that out.

Q. Do you know?

A. Yes, I do.

Mr. SHARRETTS. I ask to have the other part of his answer stricken out.

General Appraiser McCLELLAND. Yes, strike it out.

Q. How do you know whether the machinery used in Scotland is the same as that used in the textile mills in this country?

Mr. SHARRETTS. That is objected to as leading and immaterial.

General Appraiser McCLELLAND. It is not leading.

Mr. SHARRETTS. He says, "How do you know that it is the same?"

General Appraiser McCLELLAND. No, I understood the question to be, "How do you know the machinery to be the same?"

Mr. SHARRETTS. I object to that as immaterial.

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. By examination.

Q. From such examination as you made, what are the facts? Are the machines the same or different?

Mr. SHARRETTS. That is objected to as immaterial

A. They are practically——

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. (Continuing.) They are practically the same.

Q. Now during the late war in Europe, did you have any special commission or authority to visit mills in this country and issue instructions and directions for the conduct of the work in those mills?

A. I did.

Mr. SHARRETTS. That is objected to as immaterial. I can't see the purpose of all of this.

General Appraiser McCLELLAN. I don't see the relevancy of all of that.

Mr. LAWRENCE. It is relevant, in my judgment, as showing the broad experience of Mr. Seaver in the mills.

333 General Appraiser McCLELLAND. Well, he has shown a very extended experience. The question of whether he was authorized to issue instructions is not material one way or the other. You have qualified him by the recital of his actual experiences in gaining knowledge as to wools, and as to the wools, of those wools in manufacturing establishments. Whether he issued instructions or not does not seem to the board to be of any importance. Objection sustained.

Mr. LAWRENCE. Exception.

Q. During the European war did you visit various mills?

A. I did.

Q. In which wool was treated in preparation for the manufacture of woolen goods?

Mr. SHARRETTS. That is objected to as leading, very leading, and it is immaterial.

Mr. LAWRENCE. I will withdraw the question.

Q. What was the purpose of the visits?

Mr. SHARRETTS. That is objected to as immaterial. I can't see what his purpose was in visiting.

General Appraiser MCCLELLAND. Well, assuming that he is still qualifying him, if the answer indicates anything, anything else, well, that is different. Objection overruled.

A. To see that the specifications of Government contracts were properly carried out in all details.

Q. Did you see the character of the wool that was used?

A. (No answer.)

Q. Did you witness the mechanical processes?

A. I did.

Q. The finishing processes?

A. Yes, I did.

Q. Did you observe the qualities of wool being used?

A. I did.

Q. And did you see the finished goods made from those wools?

A. I did.

Q. Now, referring to the various mills in the New England States and others that you have mentioned, have your visits been to both woolen and worsted mills?

A. They have.

Q. From the experience you have detailed, have you acquired knowledge of the characteristics, qualities, and types of practically all wools?

A. I have.

Q. Have you information which would enable you, by examining given samples of wool, to determine their quality, grade, or type?

A. I have.

Q. Have you the information which would enable you to determine their fitness for use?

A. Yes.

334 Q. Do you know a class of wools known as carpet wools?

A. I do.

Q. Do you know the common characteristics of carpet wools?

A. I do.

Q. What are they?

A. Carpet wools are imported in two divisions; that is, combing and those for carding.

Q. What is the distinction between those two types?

A. The length of staple.

Q. Are you familiar with the class of wools known as clothing wools?

A. I am.

Q. What are the common characteristics of clothing wools that distinguish them from carpet wools?

Mr. SHARRETTS. That is objected to. He has not stated anything about distinguishing.

General Appraiser MCCLELLAND. If he knows the commodity, clothing wool, now, let him state what that is.

Q. State the common characteristics of clothing wool.

A. Clothing wools are all wools excepting what are known as carpet wools.

Q. Yes, but what are the characteristics of wools which enable you to determine whether they are the clothing or carpet class?

A. Blood.

Q. What do you mean by that?

A. The degree of fineness or coarseness in the fiber.

Q. Now, if I show you a dozen samples of wool, what characteristics would you look for in determining whether they were of the clothing or of the carpet class?

Mr. SHARRETTS. That is objected to, if your honor please. He has not shown what was the occasion for doing that.

Mr. LAWRENCE. The proper conduct of his business necessitates, at least under the emergency act, that he must determine between clothing wools and carpet wools.

General Appraiser MCCLELLAND. Must determine an article is clothing wool regardless of what other wools may be.

Mr. LAWRENCE. He has got to determine the negative.

General Appraiser MCCLELLAND. The question is here, clothing—what is commonly called clothing wool.

Mr. LAWRENCE. But not commonly known as carpet wool. That involves a determination of whether it is one or the other.

Mr. SHARRETTS. Then he should limit his experience to the emergency act and to what he has been doing, perhaps, since that act has been in force, not any prior experience. He has not shown how he is qualified in any other way.

335 General Appraiser MCCLELLAND. This is another way of getting into the distinguishing features between the two classes of wool. Objection overruled.

Mr. SHARRETTS. Exception.

A. Blood first, strength of the fiber second, length of the fiber third.

Q. How would those characteristics manifest themselves in clothing wool?

A. In the same way.

Q. How do you determine the blood?

A. Well, woolmen know by the breed of the sheep very nearly the blood by looking at the quality of the wool.

Mr. SHARRETTS. If your honor please, I move to have the answer stricken out as not responsive.

General Appraiser MCCLELLAND. Strike it out.

Q. How do you determine the blood?

A. By examination of the quality; that is, the diameted of the fiber of the wool.

Q. What is the difference in the fiber of the clothing wool and of carpet wool?

Mr. SHARRETTS. That is objected to. It has not been shown that there was a difference.

General Appraiser MCCLELLAND. Find out first if there is a difference.

Q. Is there a difference in the diameter of staple between clothing wool and carpet wool?

A. There is a big difference.

Q. Are there any other differences between the two wools?

A. The carpet wools are harsher to the feel, with less blood.

Q. When you say with less blood, what do you mean?

A. As a rule, the carpet wools are run out of any good blood whatsoever.

Q. During your experience have you dealt in or handled domestic wools?

A. I have.

Q. And what were they used for?

A. Clothing.

Mr. SHARRETTS. I ask to have that answer stricken out, if your honor please, the question is entirely too general and indefinite, for one thing, and it has not been shown that he has an experience upon which he could answer such a question.

General Appraiser MCCLELLAND. The question is limited to domestic wools.

Mr. SHARRETTS. What are domestic wools used for?

General Appraiser MCCLELLAND. Yes. I don't think he is shown to be qualified to answer that. Mr. Lawrence, the question is, whether his visits to the mills, and what he witnessed there, had to do with domestic wools and foreign wools.

336 Q. Have you seen domestic wools actually employed in manufacture?

A. I have.

Q. On more than one occasion?

A. A great many.

Q. And did you notice what they were being made into?

A. In a great many cases.

Q. What were they being made into?

Mr. SHARRETTS. That is objected to—"in a great many cases."

General Appraiser MCCLELLAND. Let us have his experience. He can't go beyond that in any case.

A. Men's wear——

General Appraiser MCCLELLAND. Objection overruled. The understanding is, of course, that he is giving his experience only.

Mr. SHARRETTS. Exception.

A. (Continuing.) Women's wear, blankets, flannels, hosiery, felt, paper makers' felt; in fact, all classes.

Q. What is the significance of the word "staple" as applied to wool?

A. The word "staple" means, when you extend a fiber of wool to the same length that a machine—that is, a natural length, that is the staple.

Q. And in physically examining a sample of wool, what is the first test that you ordinarily apply to determine its quality and use?

A. I look for the blood.

Q. What else?

A. Then the strength, then the staple.

Q. Now having visited woolen and worsted mills, I understood you to say that you were familiar with the wools used in such mills?

A. I am.

Q. Are the processes employed in the woolen and worsted industries the same or different?

A. The process in the woolen mill for getting the wool ready for the yarn is different.

Q. Go ahead, there is no objection yet.

A. It is different from that in a worsted mill in getting the wool ready to be spun into yarn.

Q. What important difference is there, if any?

Mr. SHARRETTS. If your honor please, that is objected to. The witness has stated the differences.

Mr. LAWRENCE. No, he has not: he has stated there are differences.

General Appraiser McCLELLAND. When he was simply asked if there were any differences, instead of answering, he went on in detail. Whether he covered them both, I don't know. If there are any differences, he may state them.

Q. If there are differences in the processes employed in the wool mills and worsted mills, state what they are.

337 A. In a woolen mill the wool is sorted, scoured, picked, carded, made into a roving, and from the roving the yarn is reduced and spun. In a worsted mill the wools are sorted, scoured, blown, carded, bagged, and balled. Then the balls, which have four ends, they are placed around in a circle, and then they are ready to go through the combing process.

Q. What is the significance of the term "combing"?

A. A grade.

Q. A grade?

A. Of wool.

Q. A grade adapted for what purpose?

A. Combing. A man in buying wools for strictly combing purposes looks for his blood, his strength of fiber, the whole length of the fiber, and the staple.

Q. Are some wools which are used in the manufacture of clothing sometimes adapted for combing and at other times not?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. If it is only objected to on the grounds of immateriality, the objection is overruled.

Mr. SHARRETTS. It is objected to as leading, too.

General Appraiser McCLELLAND. I think it is leading.

Mr. LAWRENCE. I will withdraw it.

Q. Are all wools which are used in the manufacture of clothing adapted for combing?

A. No.

Mr. SHARRETTS. That is objected to as leading.

General Appraiser McCLELLAND. Well I think it is. Let him state the purposes for which the wools are to be used.

Mr. LAWRENCE. Exception to the ruling.

Q. Do you know whether or not all wools used in the manufacture of clothing are commercially susceptible of being combed?

Mr. SHARRETTS. Yes, or no.

Q. Answer, yes, or no.

A. No.

Q. You don't know?

A. I said no.

Q. I asked you whether you knew, and you said no. Do you mean that?

A. Yes, I do know: yes, I beg your pardon.

Q. How have you acquired knowledge which enables you to answer that? How do you know?

A. By seeing wools in the different processes, both in the woolen and worsted mills.

Q. Now, what is the fact?

Mr. SHARRETTS. That is objected to. It calls for a conclusion, for one thing, and another thing, seeing it in the process of manufacture does not sufficiently——

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. There are wools that are adapted for the combing process that could not be used in the woolen process. There are wools that are wools in the woolen process that are adapted to combing, and some that are adapted to woolen and not adapted to combing.

338 Q. Have you any samples which would illustrate such wools that are adapted for both woolen and worsted processes?

A. I have.

Q. Will you produce them?

(Witness produces samples.)

Q. What is this first sample you produce, which I ask to be marked for identification "J S A"?

A. The first sample is a sample of Australian. It is invoiced——

Mr. SHARRETTS. I object to having him state how it is invoiced, and I move to strike it out. It is somebody else's importation and some outside exhibit, and he has started to state how this particular wool is invoiced.

General Appraiser McCLELLAND. Never mind how it is invoiced. Strike out that part of it.

A. The first sample——

Q. You stated it was a sample of Australian what?

A. Australian clothing, invoiced as such.

General Appraiser McCLELLAND. Strike it out.

Q. How long have you been familiar with the wool of this type?

A. A great many years.

Q. Have you seen it used, wool of that type?

A. I have seen it used.

Q. And what have you seen it used for?

A. I have seen it used in clothing and also in combing.

Q. When it was used in combing, what was it used for?

A. Worsted.

Q. And what were the worsteds used for?

A. Clothing.

Mr. SHARRETTS. I move to strike that out.

Q. Now you said you had a sample which would illustrate wool used both in the woolen and the worsted industries?

A. There is one [producing same].

Q. Just a moment. Is the sample which you now produce, based upon your own experience, of a type and quality which is adapted to both the woolen and worsted processes?

A. It is.

Q. Commercially?

A. Comercially.

Mr. LAWRENCE. I ask that that be marked "Illustrative Exhibit G."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit G," etc.

Q. Do you know where that wool came from?

A. Australia.

Q. Was it imported at New York?

A. At New York.

Q What is this other sample which you produce?

A. The other sample is an Australian, invoiced as combing.

339 General Appraiser McCLELLAND. Strike that out, "invoiced as combing."

Q. You say that is Australian wool. Are you familiar, in your trade experience, with wool of that type, and its uses?

A. I am.

Q. How have you seen it used, in your experience?

A. I have seen it used in a woolen mill and also in a worsted mill.

Q. For what purpose?

A. For making clothing.

Q. Well, how do you account for the fact that such a wool is adapted to both woolen and worsted processes?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. Objection overruled.

A. Because the machinery in a woolen mill and the machinery in a worsted mill will both handle these wools.

Mr. LAWRENCE. I ask that this be marked "Illustrative Exhibit H."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit H," etc.

Q. Have you any other samples of wool which illustrate the character of the wools which are adapted to both the woolen and the worsted processes?

A. I have.

Q. Please produce them [witness produces samples].

A. This is a sample of Montevideo.

Q. How long have you been familiar with wool of that type?

A. For years.

Q. Are you familiar with its uses and the manipulations necessary to prepare it for such uses?

A. I am.

Q. Have you seen the process?

A. I have.

Q. Have you seen the products made therefrom?

A. I have.

Q. What is it used for?

A. It can be used for both.

Q. Both what?

A. Both in the woolen mills and in the worsted mills.

Q. Commercially?

A. Commercially.

Mr. LAWRENCE. I ask that that be marked "Illustrative Exhibit I."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit I," etc.)

Q. Have you any other sample which you wish to introduce?

A. [Witness producing sample.] This also is Montevideo.

Q. A South American wool?

A. South American, Uruguay.

Q. How long have you been familiar with wool possessing these characteristics?

A. For years.

Q. Have you seen it used?

A. I have.

340 Q. Do you know the processes necessary to prepare the wool?

A. I do.

Q. Have you seen the processes?

A. I mean the process——

Q. I say, have you seen the process?

A. I have seen the process.

Q. What is such wool commercially adapted for?

A. For both woolen purposes and also for the worsted process.

Mr. LAWRENCE. I ask that that be marked "Illustrative Exhibit J."

(There being no objection, the sample just referred to was admitted in evidence and marked "Illustrative Exhibit J," etc.)

Q. Now, Mr. Seaver, do you know the terms commonly employed amongst dealers to designate the various grades and types of wool, both the foreign and domestic?

A. I do.

Q. Referring now to Australian and New Zealand wools, how are the grades and qualities described or designated?

Mr. SHARRETTS. That is objected to, if your honor please: the witness has not been shown to have been engaged in the trade. How can he testify as to that?

General Appraiser MCCLELLAND. How was it described by whom; by him or by whom?

Mr. LAWRENCE. Well, by those familiar with wool designations.

Mr. SHARRETTS. That is objected to as hearsay.

General Appraiser MCCLELLAND. It doesn't state that this witness has been in the wool trade for 17 years.

Mr. LAWRENCE. That would go to the weight of his testimony.

Mr. SHARRETTS. I don't think that this witness should be allowed to put into the record testimony for the purpose of finding out later on whether or not it agrees with the testimony of other witnesses.

General Appraiser BROWN. That is not the point. The point is, along with other testimony, it might establish a practice. His would be limited to his experience, which was 17 years ago.

Mr. SHARRETTS. It is also purely hearsay testimony. He is not engaged in the trade.

General Appraiser MCCLELLAND. There can be no objection to his answering the question if it is based upon his experience prior to the time that he left the trade and became examiner.

Q. You can testify, based upon the conditions existing during your trade experience, Mr. Seaver.

Mr. SHARRETTS. If your honor please, I think the counsel could put that in the form of a question instead of instructions.

A. By blood.

Mr. SHARRETTS. I would like to have the necessary qualifications of that question put to the witness.

341 General Appraiser MCCLELLAND. I think I stated that his answer must be limited to his experience gained before he entered the Government service 17 years ago.

Mr. SHARRETTS. It should read, "how are they."

Q. How are the grades and qualities of South American wools designated?

A. Buenos Ayres, Montevideos. What we know as Buenos Ayres wool and Montevideo wool are known by blood.

Q. How are the grades and types of domestic wool designated?

A. They are separated by blood.

Mr. SHARRETTS. I object.

Q. You must wait until the objection is put and a ruling made, before answering.

General Appraiser MCCLELLAND. That question is subject to the same criticism as the others. You are asking for the present understanding?

Mr. LAWRENCE. I am limiting the questions to his trade experience.

Mr. SHARRETTS. I don't think the witness understands.

General Appraiser McCLELLAND. If he has testified to trade understanding, of course it must be limited to the time covered by his experience in the trade.

Q. Mr. Seaver, your answer should be qualified and limited to your experience when you were in the trade?

A. No; not only in the trade, but as an examiner of wool in the United States appraisers.

General Appraiser BROWN. We have excluded it, later than your experience in the trade. You are being asked now of matters derived solely from your experience in the trade itself.

The WITNESS. My first experience was in the trade itself, and the same thing appertains to-day, since I have been here.

Q. Please tell us how the grades of domestic wool were designated during your trade experience?

A. As fine, fine medium, medium, and coarse, the four principal grades.

Q. Are you familiar with such terms as 60's, 64's, and 48's, as applied to wool?

A. I am.

Q. What is the significance of those terms?

A. A 64's wool is a wool that is supposed to be used in a 64's yarn.

Q. Now, during your experience as examiner, have you found that those terms are commonly used to-day?

Mr. SHARRETTS. That is objected to as immaterial.

A. I have.

General Appraiser McCLELLAND. You can make your question broad enough, in his contract with wool men.

342 Mr. LAWRENCE. Well it seems to me that some of these objections are rather technical and hypertechnical.

Mr. SHARRETTS. Almost as much so as the question.

Mr. LAWRENCE. Yes, almost as absurd as the question.

Q. Mr. Seaver, as examiner, do you come in immediate contact with the wool trade?

A. I do.

Q. Is that limited to New York?

A. No.

Q. How else and where else do you come in contact with the trade?

A. In Boston and Philadelphia.

Q. And do you see the invoices of imported wools at Boston and Philadelphia from time to time?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser McCLELLAND. That is getting away from your original question altogether.

Mr. LAWRENCE. I know, but I may add to it.

Q. Now, based upon your contact with the trade during the period you have been examiner, have you found that these terms designate the types of wool by count or by blood, commonly employed?

Mr. SHARRETTS. One minute. That is leading.

General Appraiser MCCLELLAND. It is, more or less.

General Appraiser BROWN. What is your other objection to this line of questioning?

Mr. SHARRETTS. My objection to that particular question was, that it was leading.

General Appraiser BROWN. What is your objection to this character of testimony?

Mr. SHARRETTS. Do you mean as a whole?

General Appraiser BROWN. Yes.

Mr. SHARRETTS. My objection has been stated in each instance with the specific objection to the form and character of the question. Of course I don't know what the witness is going to testify to.

General Appraiser MCCLELLAND. Answer, yes, or no.

A. Occasionally.

Q. Based upon your contact with the wool trade during your experience as examiner, state whether or not the designations of wool by count and blood are or are not common methods of describing the wool?

A. They are of common use in the trade.

Q. Now, with reference to carpet wools, Mr. Seaver, are you familiar with the processes by which they are prepared for ultimate use?

A. In a general way, that is all.

Q. Have you been to the mills where they are treated?

A. I have never gone through the machinery.

Q. Now will you please examine Exhibits 1 to 12, inclusive, there are 13 samples, because there is a 10 and 10A.

A. I have looked at them.

343 Q. You have looked at them. Do want to look at them again?

A. No.

Q. Have you examined Exhibits 1 to 13, inclusive?

A. I have.

Mr. LAWRENCE. I want to state on the record that there are 14 samples, because there is a 10 and 10A.

Q. As a dealer in wool and an examiner of wool are you familiar with wools of the types and grades represented by Exhibits 1 to 13?

A. I am.

Mr. SHARRETTS. That is objected to, that part of the question, "as a dealer"—that is too remote, 17 years ago.

General Appraiser MCCLELLAND. Objection overruled.

Q. You may answer.

A. Sample from 1 to 13—

General Appraiser MCCLELLAND. Are you familiar; that is it.

Q. I ask you if you are familiar with the wools possessing characteristics and qualities of those wools, based upon your experience as a dealer in wool and as an examiner of wool?

A. I am.

Q. How many years have you been familiar with wools of those types?

A. Forty or more.

Q. Have you seen wools, possessing the characteristics of those wools employed in the manufacture or fabrication of merchandise?

Mr. SHARRETTS. That is leading. It is objected to.

General Appraiser MCCLELLAND. Objection overruled.

A. I have seen wools of the description of samples 1 to 13 go into woolen and worsted goods.

General Appraiser MCCLELLAND. That was not the question at all, Mr. Lawrence.

Mr. LAWRENCE. No; that is the answer.

General Appraiser MCCLELLAND. The last part of it is gratuitous.

Q. The question is this; have you seen wools possessing the types and qualities of these wools actually used in the fabrication of merchandise?

A. Yes, or no.

General Appraiser MCCLELLAND. Strike out the other answer.

A. Yes.

Q. What sort of merchandise were they made into?

Mr. SHARRETTS. Did he see them made into?

A. Numbers from 1 to 12 are susceptible of being used——

General Appraiser MCCLELLAND. No, no.

Q. What merchandise; what articles?

A. They go into clothing.

Q. With reference to Exhibit 13, for what process is that adapted, the woolen or worsted?

A. That would be bought and sold as a clothing wool.

Mr. LAWRENCE. Strike it out.

344 Q. I asked you for which process, the woolen or worsted?

A. The woolen.

Q. Having in mind the qualities and characteristics of Exhibits 1 to 13, will you state whether they are included in or excluded from the class of carpet wools?

A. Excluded.

Q. Are such wools included in or excluded from the class of clothing wools?

A. No.

Mr. SHARRETTS. That is objected to as a conclusion of law, as to whether they are included or excluded.

General Appraiser MCCLELLAND. In the first place you haven't shown by this witness any term recognized among the people who know anything about wool as clothing wool.

Mr. LAWRENCE. He covered that about an hour ago, your honor.

General Appraiser MCCLELLAND. As distinguished from what?

Mr. LAWRENCE. Carpet wool. Now I want to know whether these are in one class or the other?

General Appraiser McCLELLAND. All right.

Mr. SHARRETTS. I don't think he gave any general recognition.

General Appraiser McCLELLAND. You can take all of that on cross-examination. Objection overruled.

Q. Are such wools as Exhibits 1 to 13, inclusive, included in or excluded from the class known as clothing wool?

A. They are included in the class known as clothing wool.

Q. How long has that been true, according to your knowledge?

A. Forty-nine years.

Q. Based upon your knowledge, your general knowledge of wool, is there any substantial quantity of carpet wool produced in this country?

A. None. No substantial quantity at all.

Q. Based upon your trade experience and your experience you have gained as an examiner, do you know whether the quantities of wool commercially adapted to combing is greater or smaller than it was 20 or 30 years ago?

Mr. SHARRETTS. That is immaterial.

General Appraiser McCLELLAND. How is that material?

Mr. LAWRENCE. It is material as showing that the combing process—I want to develop that the combing process has been greatly extended in modern times as the result of inventions which enable the mills to utilize in the worsted process wools which could not be so used a few years ago.

General Appraiser McCLELLAND. I think that has been abundantly proved by a number of witnesses since the French comber came in. I don't think there has been any dispute about it.

Mr. LAWRENCE. All right; I won't press the question.

345 Q. Mr. Seaver, do you know, from your experience, both commercially and officially, whether ungraded wools contain quantities of wool some of which are adapted for combing and others which are not?

Mr. SHARRETTS. That is objected to.

General Appraiser McCLELLAND. Are we dealing with ungraded wool here or not? If we are not dealing with ungraded wool, I don't see how this can matter.

Mr. LAWRENCE. It is material in its bearing on such importations as may be ungraded.

General Appraiser McCLELLAND. I know; but we haven't any here, as far as these records show.

Mr. LAWRENCE. But these are selected protests.

General Appraiser McCLELLAND. But these are the cases being tried.

Mr. LAWRENCE. And there are hundreds awaiting the outcome of this trial.

General Appraiser McCLELLAND. But we are not trying them.

Mr. LAWRENCE. I submit that it is a question the answer to which would have a material bearing upon the final determination of this issue.

General Appraiser McCLELLAND. If we are hearing any protests that cover ungraded wool, that is one thing. If we are not, it is improper. Objection sustained.

Mr. LAWRENCE. Exception.

Q. Mr. Seaver, do you examine importations of camel's hair?

A. I do.

Q. And Angora goat hair?

A. I do.

Q. Alpaca?

A. Yes.

Q. Do you know from your personal experience the uses to which those commodities are put?

A. Yes.

Q. How have you acquired that knowledge?

A. In most cases by seeing the manufactured article containing those different hairs.

Q. Based upon that experience, what have you found to be the common uses of these hairs?

Mr. SHARRETTS. If your honor please, he has not been qualified to answer that question.

General Appraiser McCLELLAND. He has just testified that he has seen articles manufactured from camel's hair. Objection overruled.

A. For clothing purposes.

Q. Do you receive at the port of New York importations of noils of camel's hair and Angora goat?

A. I do.

346 Q. Do you know, from your business experience, how noils are produced?

Mr. SHARRETTS. That is objected to as immaterial. This case is not involved in the question of noils; it is a separate case. I don't think he ought to be allowed to try that case in this one.

Mr. LAWRENCE. If the board please, the importers are contending that this wool is not included under paragraph 18, because it is of a combing quality. I propose to show that camel's hair and Angora goat hair, which are included in paragraph 18, are hairs of a combing quality, and I am leading up to that in this way by showing that Mr. Seaver is familiar with the noils, and that noils are the result of a combing process. I am not trying the noils case at all.

General Appraiser McCLELLAND. Objection overruled.

A. They are a by-product of the combing process.

By Mr. SHARRETTS:

Q. Now, Mr. Seaver, have you ever had any experience in a mill producing clothing?

A. I have.

Q. I mean the finished articles of clothing?

A. No.

Q. And such experience as you have had in mills were either woolen mills or worsted mills producing fabrics of some kind, is that correct?

A. That is correct.

Q. And when you testified as to the use to which various wools were put, you intended to limit yourself, did you not, to cloth, without going beyond that?

A. Up to cloth.

Q. Of course you recognize that some cloth is used for some purposes other than clothing, do you not?

A. No.

Q. None of it?

A. None.

Q. How about upholstery?

A. You would not call it a cloth; that is upholstery.

Q. Before it is made into a finished article it is in the form of a cloth?

A. No; it is in the form of a woven fabric, not necessarily a cloth.

Q. If you haven't had any experience in the mills, how can you state that so definitely?

A. Because in the woolen mills and the worsted mills they make cloth. Upholstery mills, I have never been in, but an upholstery piece of goods is a thing all by itself, and has nothing to do with the woolen process.

Q. Have you ever passed on upholstery goods?

A. No, sir.

Q. You have never had any experience in the manufacture?

A. No.

347 Q. In dealing with it?

A. No, sir.

Q. In buying and selling it?

A. No, sir.

Q. How do you know that it is not a cloth?

A. Because it has not the feel nor the texture nor the finish of a cloth.

Q. Where did you get your information about the feel and the texture of upholstery goods?

A. By looking at the goods as you go into a store, or have them in your house.

Q. That is the limit of your experience?

A. That is the limit.

Q. When you state that certain wools come within a broad class, clothing wools, did you simply mean by that that they were made into cloth?

A. Made into clothing; yes.

Q. As I understand it, you base your statement that it was made into clothing on the fact that it was made into cloth?

A. That is right.

Q. So when you stated that certain wools were clothing wools you did not mean anything more than that they were made into cloth?

A. I mean made into cloth going into clothing.

Q. But you know nothing about the process of manufacture?

A. I have seen it cut up.

Q. Only as a member of a community, but not as an expert?

A. Not as an expert.

Q. I don't suppose that you see all of it that has been cut up, do you?

A. All goods that I have reference to are put into clothing.

Q. I think you spoke of the various qualities of wool, such as fine, medium, and coarse; the division in that way is based entirely as to the quality of fineness?

A. Of the blood; yes.

Q. By blood you mean the quality of fineness, don't you?

A. The word "blood" defines the quality.

Q. It has come by usage to refer to the quality of fineness, where the words "quarter blood" or "half blood" are used, that means the quality of fineness?

A. That means quality of fineness or coarseness of the fiber.

Q. That same is true of the various numeral terms such as 60's, etc.?

A. Exactly.

Q. That is the Bradford system?

A. Not only the Bradford, but all over the world.

Q. I suppose that covers about the same range as the domestic qualities, from the fine down to the coarse?

A. Yes.

Q. Now, take any particular quality of fineness such as in the domestic system, half blood; that in turn is divided with respect to length of staple, is it not?

A. Not necessarily; no.

Q. But as a general rule there is a division as to length of staple in each quality of fineness, isn't there?

A. Yes; there is.

348 Q. In which case that is divided into clothing and combing, is it not?

A. The length of staple has nothing to do with the definition of combing and clothing as to making classes.

Q. I am talking about grades. There is a clothing and combing wool in each quality of fineness, is there not?

A. No, there is not. They are divided by length of staple.

Q. Into clothing and combing?

A. Clothing and combing.

Q. That is correct, into clothing and combing?

A. Yes.

Q. So then there is a fine clothing and a fine combing; is that correct?

A. No, it is not correct.

Q. Is there a half-blood clothing and a half-blood combing?

A. That word "combing" means nothing except a particular grade.

Mr. SHARRETTS. I ask to have the answer stricken out as not responsive.

General Appraiser MCCLELLAND. Let it stand and ask him if it has anything to do with the length of staple.

Q. Has the term "combing" anything to do with the length of staple?

A. A wool susceptible of being combed is supposed to have some staple; yes.

Q. Mr. Seaver, you have seen various market quotations, have you not, in papers and in magazines, and in trade journals?

A. I have.

Q. Have you ever seen wool graded in there by terms of fine clothing and fine combing?

A. I have.

Q. Half-blood combing and half-blood clothing?

A. I have.

Q. And so on down through the list?

A. I have.

Q. Do you know what that referred to?

A. I do.

Q. Doesn't that refer in one instance to the short staple, that is, the clothing being the short staple, and to the combing, being the longer staple that is ordinarily put into the worsted systems of manufacture?

A. No; the words "half-blood combing," "three-quarter combing" and those things, are not always strictly, by any means, combing wool. They are simply put in to see if they can be combed, and if they can't, they go back to the clothing, irrespective of the trade term "combing."

Q. That is your personal opinion of it?

A. That is my personal opinion.

Q. I am speaking now about the wool that is in the market, that is bought and sold, one under the name of fine clothing and the other under the name of fine clothing and so on down through the system; clothing wools are the wools that ordinarily go into the woolen system.

A. Yes.

349 Q. And the combing wools are the wools that ordinarily go to the worsted system?

A. I think it is a very wide question.

Q. As a general rule that is the division?

A. That is the division, but not the usage.

Q. I show you here a pamphlet which purports to be the monthly statistical summary of the woolen and worsted industry. On page 2 you will find there the various grades of wool with the quantities "for various months." This part that is marked between the lead pencil marks. Is that the ordinary way of quoting various qualities and grades of wool?

Mr. LAWRENCE. I object to that on the ground that it is incompetent, immaterial, and hearsay.

Mr. SHARRETTS. It is proper cross-examination, I think.

General Appraiser McCLELLAND. You don't know what this is.

Mr. SHARRETTS. I have just described it, and will, later on——

General Appraiser McCLELLAND. Of course your objection is a little premature, and he has not detailed anything that is in there. I think we ought to know what the paper is. It may be that it may be excluded on this hearing, as we have a great many other papers. I think that unless it is disclosed what the paper is, that the other side's objection is good.

Mr. SHARRETTS. I will withdraw the question.

Q. Do you recognize this pamphlet as one that is published in the trade?

A. I have received, I think, four of those, since they have been published.

Q. But they were sent to you in the course of your business and official experience, that you have referred to?

A. That came to me through a Government department, and I paid no attention to it whatsoever.

Q. But you have received it?

A. As I said.

Mr. SHARRETTS. Now I offer it in evidence.

Mr. LAWRENCE. That is objected to as incompetent and immaterial. The witness has said that he has seen four copies of it and has given it no attention whatever. Its identity has not been established in any sense.

Mr. SHARRETTS. It is brought out by my friend, who has spoken of his experience and qualifications.

General Appraiser McCLELLAND. It seems to me that we have had quite an extended experience with these publications during the hearing in this case. You will recall that one magazine or periodical was offered by the Government, and it was shown that certain articles contained in it were accredited to the witness who was then
350 on the stand, and he repudiated them right then and there. I have uniformly excluded all of these publications because the persons who wrote the articles or made the classifications were not present. They might repudiate them all just as that other witness did.

Mr. SHARRETTS. This witness might specify these grades as being usual. Exception. I will ask that it be marked for identification.

(The paper just referred to was marked "F for Identification," etc.)

General Appraiser Brown. Do you mean for an exception, is that the reason why you wish it marked for identification?

Mr. Sharretts. Yes.

Q. Mr. Seaver, throughout your experience you have seen the terms "clothing" and "combing" used constantly, have you not?

A. I have seen the terms "combing" and "clothing" used.

Q. And they have had a very general use, have they not?

A. They have a general use, yes.

Q. And whether right or wrong, the meaning that has been given to these, has been, the clothing wool as referring to the short staple wool, to the woolen industry, and the combing wool, the longer staple wools, to the worsted industry?

A. I don't agree with it.

Q. You don't agree with it, but that has been the general use, is that not true?

A. That has been the general use, yes.

Q. Now have you examined these exhibits, Mr. Seaver, 1 to 13?

A. I have.

Q. Those are all combing wools, are they not?

A. 1 to 12.

Q. Are combing wools?

A. Are adapted to the process of combing.

By General Appraiser McClelland:

Q. Are they combing wools?

A. There are some of those wools that can be interchangeable in the use, in the combing mill, according to the supply and demand.

Q. It is not a question of what can be done with them; it is a question of whether, as you have understood the terms, they are combing wools?

A. They are adapted to combing.

Q. Are they or are they not combing wools?

A. The trade generally would call those from 1 to 12 combing wools.

By Mr. Sharretts:

Q. Mr. Seaver, you have had no practical experience as a manufacturer, have you?

A. I have never worked in a mill for money, but I have had to work in the mill in order to hold my trade as a salesman and as buyer for mills.

351 Q. When did you work in a mill in the capacity that you refer to?

A. In the way I spoke of?

Q. Yes.

A. Way back in the late seventies, and in the eighties, and in the nineties.

Q. How long were you working there?

A. Sometimes an hour, sometimes two hours, sometimes three hours a day, but not every day in the week—on my different visits to the mill.

Q. Are you familiar with the combing process?

A. I am.

Q. Is it not true that the purpose of combing is to comb the short fibers out of the wool?

A. The short and tender fibers.

Q. And if there are too many short ones it does not pay to comb the wool; is that correct?

A. No; it does not pay.

Q. So that while it is possible to comb many kinds of wool, it may not be profitable or practical; isn't that true?

A. That is correct.

Q. You personally have never done any combing or grading, have you?

A. Not personally in the mechanical part.

Q. You merely went in as a person to observe what was being done?

A. I have observed very closely and followed every process and found out the reason.

Q. You were simply going for the purpose of getting some information?

A. I was doing that for a purpose. The different manufacturers were with me to teach me the different steps of carrying the wool through from the raw material into the finished; of the spinning, finishing, and weaving, and all, so that these big manufacturers instead of their having to come to the market would say to me, "I want certain wools for certain purposes," and they knew by teaching me this and showing me this that I could fill their orders.

Q. A great many wools are used in the manufacture of blankets; is that correct?

A. A great many.

Q. And wool is used very extensively for that purpose?

A. Quite extensively.

Q. How about automobile tops?

A. I know nothing about automobile tops.

Q. How about plushes for trains?

A. Those are mostly of mohair.

By General Appraiser McCLELLAND:

Q. During your experience both out of the service and in it, have you heard the terms "combing," "clothing," and "carding" wools used?

A. I have. The combing wools or carding wools besides being combing——

Q. You know I did not ask you that. I am always satisfied if I get an answer, without getting anything in addition. Is
352 there any distinct meaning as to use, applying those terms separately?

A. Yes.

Q. What are the uses of the two?

A. Carding wool is the putting of wool over a set of grades, and that set comprises three pieces of machines, first breaker, second breaker, and finisher. In the combing process the wools are separated on the grade, two pieces, the first breaker and the finisher. Then that, roughly, is eventually carried through the gilling and put on to the comb.

Q. Do those two terms have any significance as to the length of staple of the wool covered by each?

A. No meaning at all.

By Mr. LAWRENCE:

Q. Is it within your knowledge that some carding wools have longer staple than certain wools for combing?

A. They are.

Q. And is the converse true?

A. Yes.

Q. Now, in speaking of the blood designations, does the diameter of the staple have any significance as a determining factor?

Mr. SHARRETTS. That is objected to as repetition.

General Appraiser MCCLELLAND. Objection overruled.

Q. Does the diameter of the staple have any bearing upon determining the blood designation?

A. The diameter of the staple has all the determining.

Q. Well, in what way?

A. The fineness.

Q. It determines the fineness?

A. It determines the fineness.

Q. Now, whether this wool represented by Exhibits 1 to 13 may be used in making auto tops or blankets or upholstery or a variety of other things, is it of a quality or fineness which adapts it for clothing?

Mr. SHARRETTS. That is objected to as leading. It is almost cross-examination.

General Appraiser MCCLELLAND. It is leading, but I think we will let him answer.

A. I know nothing about auto tops.

Mr. SHARRETTS. The witness has testified.

A. (Continuing.) As to auto tops and upholstery, I know nothing. As to other items, I answer yes.

General Appraiser McCLELLAND. That is not an answer to the question at all. Strike out the answer; it is not responsive.

Q. Bearing in mind the qualities and characteristics shown by these Exhibits 1 to 13, regardless of any other uses they may be put to, will you state whether they are adapted for the common use of clothing making?

Mr. SHARRETTS. That is objected to. He can't disregard other uses and confine himself to one that may not exist.

353 General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

A. They are.

General Appraiser BROWN. Mr. Seaver, when you make the statement that a particular wool is, in your opinion, commonly known as clothing wool, do you base it on the idea that it might be used for clothing irrespective of what its normal use might be for other purposes?

The WITNESS. I did not intend to convey any idea that those wools might be used, but are used for clothing.

Q. Do you know of any other use for which such wools are more commonly used than for clothing?

A. No; I do not.

General Appraiser McCLELLAND. It is not a question of use, it is a question of how they are known.

Mr. SHARRETTS. If your honor please, the witness has stated that the only meaning that he has given to the term "clothing" was the use.

Q. Now, on cross-examination you testified regarding the length of staple as applying to the combing of the noncombing wools; now whether these wools are of a length of staple which commercially adapts them to the combing process, are they or are they not included in the class commonly known as clothing wool?

Mr. SHARRETTS. That is objected to; in the first place it is hypothetical. He commences it with an indefinite condition of some kind.

Mr. LAWRENCE. This witness was called upon daily, during the period from May 28, 1921, to September 21, 1922, to determine whether given wools were commonly known as clothing wool or commonly known as carpet wool.

General Appraiser McCLELLAND. How is that any part of it?

Mr. LAWRENCE. In passing on importations every day he had to do it.

Mr. STRAUSS. And there are appeals from his decisions every day.

General Appraiser McCLELLAND. Objection overruled.

Mr. SHARRETTS. Exception.

General Appraiser McCLELLAND. It is understood that you can have an exception wherever an objection is decided adversely there.

Q. I ask you whether they were included or excluded from the class commonly known as clothing wool?

Mr. SHARRETTS. That is objected to. The question has been asked, and the witness has answered it.

General Appraiser MCCLELLAND. He has answered it.

354 WILLIAM HENRY DRAKE, a witness for the United States, was duly sworn and testified as follows:

By Mr. HOPPIN:

Q. Where is your business address?

A. In America, 212 Summer Street, Boston.

Q. What is the name of your firm?

A. W. C. Gaunt & Co.

Q. What is the nature of your business?

A. Wool.

Q. How are you connected with the firm?

A. I am the managing director in America and Canada for Gaunt.

Q. And have you connections abroad?

A. Yes: considerable.

Q. How long have you been in the wool business?

A. I have been in the textile and wool business since I was 8 years old, and I am now 58.

Q. Will you give briefly your experience in the wool business, Mr. Drake?

A. Since 1872.

Q. How did you start?

A. I started in a spinning mill.

Q. Where?

A. At Allarton, near Bradford, England.

Q. How long were you at that?

A. I was at that until I was 13 years old; that is what you call a short time in England, working half days.

Q. In the spinning mill, what were your duties; did you go through the various departments of that mill?

A. Yes; I went through practically all of them that a youngster could do.

Q. What did you do then, when you were 13?

A. Well, I probably——

Q. Just give us briefly. You don't have to detail every year; in general, your experience.

A. I went from 13 to 16 into the dyeing of these particular things. I worked in the dye works, and the next step, from apprentice to wool sorter, from 16 to 21 years old.

Q. Did you actually do wool sorting during that period?

A. Yes; and for several years after that.

Q. And did you sort a large amount of wool during that time—you, actually, yourself?

A. I sorted as much as I could in the time.

Q. And then what did you do?

A. Then I started out as a wool salesman.

Q. Did you buy and sell wool from that time on?
A. From that time to this, yes.
Q. And did you buy and sell wools of all kinds?
A. Practically all kinds, yes.
Q. From your experience you are conversant with all the grades and kinds of foreign wools?
355 A. Not exactly. I have not had a great experience in some kinds of carpet wool, but mostly all known wools.
Q. You said at what age did you go into the business?
A. Into the wool business at 16.
Q. Have you had experience during this time in domestic wools?
A. Yes.
Q. In buying and selling domestic wools?
A. Yes.
Q. And do you know from your experience the various grades and types of domestic wools?
A. Yes.
Q. Have you had any experience in carpet wools?
A. Yes.
Q. Have you had any experience in alpacas and camel's hair?
A. Yes, I have had some experience there, not so much as with other wools.
Q. Have you bought and sold those wools?
A. Yes.
Q. Have you had occasion, in the course of your experience as a buyer and seller of wool to become conversant with various manufacturing processes?
A. Yes.
Q. Are you conversant with the process of manufacture, of wool into woolens?
A. Yes.
Q. And into worsteds?
A. Yes.
Q. On what is your experience based, or your statement based, that you are conversant with the manufacture of wools into woolens *nad* worsteds?
A. We own woolen mills and we own worsted mills.
Q. And where are your mills?
A. Well we have perhaps twenty around Bradford, in Yorkshire. We have mills in France, also in Germany, Belgium, Australia, and Canada, and the States.
Q. And has it become necessary, in the course of your experience, to become conversant with the various manufacturing processes used in those mills?
A. Only, we are in the vicinity of the mills, and we are around them every day.
Q. And you have followed the various processes in these mills through from the raw product to the finished article?
A. Yes.

Q. Do the mills which you represent buy large quantities of various grades and types of wool?

A. Yes.

Q. Are you familiar with the uses to which the wools with which you are acquainted are put?

A. Yes.

Q. And how have you gained such knowledge?

A. Well, by the number of years I have spent on the job. As somebody suggested, if I had not gained the knowledge then, I would not be worth while.

Q. Are you familiar with the various grades and types by which wool is designated?

A. Yes.

Q. What are some of those grades or types?

356 Mr. SHARRETTS. If your Honor please, this witness has been shown to have great qualifications in Europe.

Mr. HOPPIN. I will qualify him. I thought I had gone into it, your Honors. I thought I was taking too much time for qualification.

General Appraiser MCCLELLAND. Go ahead.

Q. Will you state what some of the grades and types of wool with which you are familiar are?

A. Yes, I am acquainted with all of what we call Colonial wools, New Zealand, and Australian; the English wools, and all wools grown in the British Isles.

Q. Domestic?

A. Domestic as well as wools grown at the Cape in Africa, and wools grown in South America.

Q. And how are they in the trade usage, what is the—Can you tell from your experience what is the usual designation, in buying New Zealand or Australian wool?

Mr. STRAUSS. That I object to. It goes into the trade designation, and the witness has not been properly qualified.

General Appraiser MCCLELLAND. He has been qualified more as a manufacturer than as a dealer.

Mr. HOPPIN. He testified that he had been a dealer since he was 16 years old.

General Appraiser MCCLELLAND. Buying and selling wools.

By General Appraiser MCCLELLAND:

Q. How long have you been buying and selling wools in the United States?

A. Six years.

Q. You have bought large quantities?

A. I think there are many in the room who know that.

Q. In different kinds of wool?

A. Yes, sir.

Mr. STRAUSS. We are interested in what his firm does in that regard, but it is his personal qualifications.

The WITNESS. My personal qualifications are sufficiently big to buy 20,000,000 pounds in a deal, or sell it in a deal.

Mr. HOPPIN. Does that satisfy you?

Mr. STRAUSS. We are not here to be satisfied.

By Mr. HOPPIN:

Q. During the time that you have dealt in wool, have you actually bought and sold wool on contract during that period in large quantities?

A. Yes, to all the big mills in America, or practically all of them.

Q. And you have done that personally?

A. Personally.

357 Q. Now, are you familiar with the mechanical operations in the woolen and worsted mills in preparing them for their ultimate use?

A. Yes.

Q. And you have acquired that knowledge from your actual experience going into the mill?

A. In the early part of my life, yes.

Q. And are you familiar with the general character of wools which go into the manufacturing of clothing?

A. Yes.

Q. What are they, the general characteristics of wools that are used in the manufacture of clothing?

Mr. SHARRETTS. That is objected to as immaterial.

General Appraiser MCCLELLAND. Go ahead. Objection overruled.

A. All wools except wools that are used for carpet purposes are for clothing.

Q. What are the general characteristics of the wools which you say are commonly used for carpets?

A. Well, the characteristics are, wools that are known in the trade, some of them as "Kampy" wool. They have peculiar properties of standing up in carpets.

Q. So I understand your answer, they have a coarser grade in general than those which you put in the class commonly known as clothing wool?

Mr. SHARRETTS. That is objected to as leading.

General Appraiser MCCLELLAND. He has not said a word about clothing wool.

Mr. HOPPIN. He said that all wools except those which are commonly used for carpets, were in the class commonly known as clothing wool.

General Appraiser MCCLELLAND. The witness has not been examined on the question of clothing wool. You have embodied that in the body of your question.

Mr. HOPPIN. Known as.

Mr. SHARRETTS. I ask that that question be stricken out.

General Appraiser MCCLELLAND. Objection overruled.

Mr. SHARRETTS. I claim that the witness is misquoted there.

General Appraiser McCLELLAND. He is a very intelligent man. [To the witness:] Do you understand the question?

The WITNESS. I understood the question. I would like to repeat the answer I gave. Carpet wools, I said, were known as "Kampy" wools, wools that were harsh to the touch, and wools that had peculiar qualities for making carpets, making them resilient and stand up better than the soft or fine wools used for clothing would do.

358 Q. Can you tell from your experience, Mr. Drake, in general, the differences between the wools which are commonly known as carpet wools and wools which are commonly known as clothing wools?

Mr. SHARRETTS. That is objected to. There is no testimony here whatsoever by this witness.

General Appraiser McCLELLAND. He has not said a word about wools that are commonly known as clothing wools.

Mr. HOPPIN. If your Honor please, he has stated that all wools that are not commonly known as carpet wools——

General Appraiser McCLELLAND. Are clothing wools, but he did not say a word about them being commonly used—that is a distinction, and it is a very important distinction, because that is the language of the law. He said that they were used to make clothing, but the question here is, what wools are commonly known as clothing wools.

Mr. SHARRETTS. Counsel is trying to force it into the mouth of the witness.

General Appraiser McCLELLAND. Go ahead.

Q. Mr. Drake, can you tell, from your experience, in general, from your examination of the wool, what would be commercially adapted for the manufacture of clothing and what would be commercially adapted for the manufacture of carpets?

A. I think I can.

Q. And could you also tell from your examination as to what wool is commonly used for the making of carpets and what is commonly used for the making of clothing?

A. Yes.

Q. What are the terms that are commonly used; are you conversant with Australian wools?

A. Yes.

Q. You have bought and sold Australian wools?

A. Yes.

Q. What are the terms commonly applied in buying or selling Australian wools?

A. We should buy them or sell them in figures. We should buy them as 70's, 64's, 60's—we are talking of merino wools.

Q. That is the count?

A. That is how we should buy them.

Q. How about New Zealand wools?

A. We should buy New Zealand wools as 36's, 44's, 46's, 50's, 48's, 56's, and 58's, and we are about through with New Zealand wools.

Q. And South American wools the same?

A. No, South American wools are rather differently; they are bought in figures at times—2's, 3's, 4's, and 5's. They grade them under those figures, but you buy them in America as you buy domestic wools.

Q. And these are grades, are they?

A. These are grades.

Q. And the European wool?

A. European wools, by which you mean grown in the British Isles mostly, there are endless grades.

359 Q. And what are those grades—what do you mean by the word "grade"?

A. I mean grade or breed—in our country—that Shropsires, Scotch, Welsh, and Irish wools; they are all grown and bred differently.

Q. So by grades you mean blood?

A. Of course I mean blood; yes.

Q. How about the Asiatic wools?

A. Asiatic wools, I think I told you a little while ago, there are some wools that I am not conversant with.

Q. As to domestic wools, in buying and selling the domestic wools, what are the terms used with which you are familiar, from your experience in buying and selling domestic wools?

A. The American terms are fine, half blood, three-eighths, and quarter blood. Those are about the usual American terms.

Q. And in general, from your experience, would you say that terms such as you have mentioned would be used in the trade in preference to the terms combing or clothing?

Mr. SHARRETTS. That is objected to as grossly leading.

General Appraiser MCCLELLAND. It is pretty difficult to say what any man would do in preference. Objection sustained.

Mr. HOPPIN. I will withdraw the question.

A recess was then taken until 2 p. m.

AFTERNOON SESSION

WILLIAM HENRY DRAKE, the witness under examination when the recess was taken, resumed the witness stand, and his examination was continued, as follows:

By Mr. HOPPIN:

Q. Mr. Drake, will you examine Exhibits 1 to 13, inclusive?

A. Yes, sir. [Witness examines exhibits mentioned.] I have casually looked around them.

Q. Have you examined Exhibits 1 to 13, inclusive?

A. Yes, sir.

Q. And have you examined Illustrative Exhibits "G," "H," "I," and "J"?

A. Yes, sir.

Q. Are you familiar with the class of wool commonly known as carpet wool?

A. Yes.

Mr. STRAUSS. I object to his putting into the mouth of the witness the words, "commonly known as." That is a conclusion of law for the court. Commonly known by whom? If the witness is going to answer a question of that kind, it leaves nothing for your honors to decide.

360 General Appraiser MCCLELLAND. He has had a very extensive experience.

Mr. STRAUSS. I am not objecting to his experience. I am objecting to the form of my friend's question. If the witness is allowed to go on the stand to testify whether a thing is commonly known as, your honors have nothing more to decide.

General Appraiser MCCLELLAND. The witness has testified that he was familiar with carpet wools, and he is distinguishing carpet wools from other wools.

Mr. HOPPIN. He now is qualified to state as to whether he is familiar with the wools.

General Appraiser MCCLELLAND. Mr. Strauss objects to the phrase "commonly known as carpet wools," and I don't see that that part is necessary to your question.

Mr. HOPPIN. If your honor please, I think that is the issue before the court: If he is familiar with it or if he is not familiar with it.

General Appraiser MCCLELLAND. If he is familiar with carpet wools. There is no such phrase used, so far as the record shows, used among wool men, as "wool commonly known as carpet wools." There are carpet wools unquestionably, and all the witnesses have distinguished between them and give their reasons for the distinction.

Mr. HOPPIN. I askd him if he knows what is commonly known as carpet wools, if your honor please. I submit there is no difference between that and asking him if he is familiar with carpet wools—what is commonly known as carpet wools. He has been qualified. His qualifications have not been objected to at all, and I say your honors in the jewelry cases have received evidence as to what is commonly known as jewelry and as to what is commercially known as jewelry.

General Appraiser MCCLELLAND. I don't think we are very deeply concerned with carpet wools.

Mr. HOPPIN. I think we are vitally concerned in it.

General Appraiser MCCLELLAND. To save time, I don't think it will make any difference. Objection overruled.

Q. Are you familiar with the class of wools commonly known as clothing wools?

Mr. STRAUSS. Will your honor allow me an objection and exception?

General Appraiser McCLELLAND. Oh, yes; you will have an exception wherever your objection is overruled.

A. Yes.

361 Q. After the examination of Exhibits 1 to 13 and Illustrative Exhibits "G," "H," "I," and "J," will you tell me in which class the exhibits would fall?

Mr. STRAUSS. I object to that.

Q. (Continuing.) They would be placed?

General Appraiser McCLELLAND. As between what?

Mr. HOPPIN. As between the class commonly known as carpet wools. I will withdraw the question.

Q. Will you tell me, after an examination of Exhibits 1 to 13 and Illustrative Exhibits "G," "H," "I," and "J," as to whether these exhibits are included in or excluded from the class commonly known as carpet wools?

Mr. STRAUSS. That is objected to as entirely immaterial and irrelevant.

General Appraiser McCLELLAND. We are not trying the carpet-wools question here.

Mr. HOPPIN. I submit that we are, and it is a question in issue as to whether the carpet wools, the parties whom this gentleman represents claim that these wools are free of duty. The emergency tariff act provides two classes of wool, one commonly known as carpet wool and the other commonly known as clothing wool.

General Appraiser McCLELLAND. There is no pretense of anybody connected with this case that I have heard yet that these wools are carpet wools, and the very witness on the stand has said that they were not, and aren't we wasting time when we are talking further about whether these are carpet wools?

Mr. HOPPIN. I submit I have a right to ask the witness as to whether he considers these exhibits within that class. If they are, then they are free of duty. They are admittedly so in the emergency tariff act.

General Appraiser McCLELLAND. All right, to save time, overruled.

Mr. STRAUSS. Exception.

(Last question read by the reporter.)

A. They are excluded from the class commonly known as carpet wools.

Q. Now, will you tell me as to whether they are included in or excluded from the class commonly known as clothing wool?

Mr. STRAUSS. I object on the ground that the witness has not shown any or put on the record any explanation of any kind in relation to the clothing wools. The examination heretofore has kept far away from that. The only thing that was asked and that remains on the record was whether he knew a class commonly known

362 as clothing wool, and he answered "yes." He has not been qualified. I don't say that he has not the qualifications, but

he has not been qualified by the Government. When the words "commonly known as" come in they embody a question of law.

General Appraiser McCLELLAND. I think it is perfectly competent for the witness to say, based upon his experience in the trade, whether these wools are included within or what are commonly known as clothing wools.

Mr. STRAUSS. By the trade.

General Appraiser McCLELLAND. No; nobody knows anything about wools except woolmen. As one witness testified, the man on the street knows a wool by the fleece. He does not know merino wool from the ordinary wool, and he does not know long-staple wool from short-staple wool. It is simply a generic "wool."

The WITNESS. They are included in the class commonly known as clothing wool.

Q. Now, can you tell me, Mr. Drake, as to whether the exhibits in question can be used in the woolen process as well as in the worsted process? Are they interchangeable in character, in other words?

A. They are interchangeable, those wools. They could be used for either woolen purposes or worsted purposes.

General Appraiser McCLELLAND. It is not so much the purpose as to what they could be used for; what are they generally used for?

The WITNESS. The wools that I see there are generally used for worsted purposes.

Q. Would it be commercially practicable to use them for woolen purposes?

A. Exactly. We have seen longer wools than those for use for woolen purposes.

By Mr. STRAUSS:

Q. Mr. Drake, the term "clothing wool" is one that is used by people familiar with wool, is it not?

A. By woolmen; yes.

Q. The term "carpet wool" is one that is used by woolmen?

A. Yes.

Q. The term "combing wool" is one that is used by woolmen, is it not?

A. Yes.

Q. Those three are well-recognized divisions into which wool falls, is that not so?

A. Not exactly.

Q. Wherein not exactly?

A. Because they are combed wools and clothing wools.

Q. I did not say combed wools, I said combing wools.

A. It still does not alter them from being clothing wools; it does not matter what the process is that is used; they are clothing wools.

363 Q. How are they known to wool buyers?

A. They are known—I can illustrate it.

Q. How are they known to wool buyers?

A. Because clothing wools are——

Q. Not because, but how are they known?

A. I am trying to tell you: because clothing wools are too short to comb.

Q. The distinction between clothing wools and combing wools is that the clothing wools are too short to comb: is that right?

A. Yes, sir.

Q. When you say "too short to comb," I suppose you mean practically and commercially?

A. I mean practically and commercially.

Q. Is it not a fact, taking any one of these exhibits that you please—I will take up Exhibit 12, for instance—what blood is that?

A. That is a cross-bred wool.

Q. Can you give me any idea in terms of blood, according to the American classification of blood?

A. I can give you the American term. It is what they call a high quarter blood.

Q. It is not true that among woolmen there are high quarter blood combing wools?

A. Exactly.

Q. And there are high quarter blood clothing wools, isn't that true?

A. That is so.

Q. Isn't that a differentiation that is well recognized?

A. No, sir: not that way.

Q. Take a half-blood: are there not half-blood combing wools?

A. Yes, sir.

Q. Are there not half-blood clothing wools?

A. Yes, sir.

Q. Isn't that a differentiation recognized among buyers and sellers, as woolmen generally?

A. No: you see you do not put the questions in the proper wool terms. I told you that the technical term is not clothing. They are all clothing wools.

Q. Answer my questions as I put them. When you say they are all clothing you mean that ultimately they go into a yarn that may or even is devoted to making cloth which ultimately is used for making clothing: is that the idea?

A. Yes.

Q. I am not asking you to have anything to do in your mind at present with the use to which that wool is put ultimately, and whether it is used for making clothing, or whether it is used for making things far remote from clothing: what I want to know is, whether it is not a fact that among woolmen, men conversant by long experience with the wool business with wools, that wools are classified according to grade into fine combing and fine clothing?

A. Yes.

Q. That they are divided according to grade into half-blood combing and half-blood clothing.

A. That is so.

364 Q. That they are divided according to grade into three-eighths blood combing and three-eighths blood clothing too?

A. That is so.

Q. That they are divided according to grade into quarter-blood combing and quarter-blood clothing?

A. That is so.

Q. And that they are divided according to grade into low combing and low clothing?

A. Yes.

Q. In short, among woolmen a distinction between clothing and combing exists?

A. It must exist.

Q. It does?

A. Of course it does.

Q. And that in the grading of wools that distinction is always applied?

A. Yes; there is combing and clothing, if you like.

Q. That is always applied?

A. Yes.

Q. You characterize Exhibit No. 12, I believe, as high quarter blood?

A. Yes; in the American term; yes.

Q. Now one step further. Isn't it in fact a high quarter-blood combing wool?

A. It is either combing or clothing, in the technical term. It is all used for clothing.

General Appraiser McCLELLAND. How is that wool known in its present condition?

The WITNESS. It is known amongst woolmen as a combing wool.

Q. It is not known as a high quarter-blood combing?

A. Yes.

Q. There is another wool of that same blood that is known as high quarter-blood combing wool?

A. I haven't seen it there.

Q. You haven't seen it here, but you have seen it in your experience?

A. I have seen the sample that you refer to as well as you refer to No. 13.

Q. Will you please not go off into matters that I am not questioning you about, Mr. Drake?

A. I am trying to explain.

Q. You have seen, in your experience, your wide experience as a woolman, high quarter-blood clothing wool, have you not?

A. Yes, sir.

Q. And that differs from Exhibit 12 only in the length of staple; is not that so?

A. Yes; that differs a little.

Q. Is that not also true of every other one remaining of the 12 exhibits, that they are all combing wools as known to woolmen?

A. There are some combing wools there shorter than the one you refer to as known to the woolmen; they are combing wools.

Q. And is it not also true that every one of those remaining 12 has its counterparts in blood which are known as clothing wools, and which are of shorter staples?

A. Not necessarily so.

Q. I am asking you whether it is necessarily—is it not so?

A. Not into as many qualities as you have there.

365 Q. All right, we will begin with Exhibit 1: what blood is that, please, Mr. Drake?

A. That is New Zealand wool.

Q. What blood?

A. In the English term it is 46's.

Q. And in the American term it is what?

A. In the American term it is quarter blood.

Q. High or low?

A. Medium.

Q. That is a medium quarter-blood combing wool?

A. Yes, sir.

Q. There is also a medium quarter-blood clothing wool?

A. Yes, sir.

Q. Which differs from Exhibit 1 in the length of staple only?

A. Yes, sir; that is about all.

Q. Will you take Exhibit 2?

A. It applies to most of them.

Q. In other words, you say that that distinction that I am bringing out among woolmen between combing and clothing applies to most of these exhibits? If not, will you point out into which it does not apply?

A. I can point out in your phraseology it belongs to about four, and in the English sense it would apply to a dozen, because there are so many grades and terms.

Mr. STRAUSS. May I ask that the witness be instructed to answer?

General Appraiser MCCLELLAND. Please remember this, that you are testifying in the United States and not in England, and we are accustomed to use American terms, especially when we are dealing with classifications of wool.

Q. Are there anywhere in the Exhibits 1 to 13 which you have examined, any wool which, among woolmen, is not known as combing wool?

A. There are none.

Q. Is there any wool from Exhibits 1 to 13 which is not a counterpart, that among wool men is known as clothing wool?

A. That would be difficult—there are 13 different lots like that. We should have a first combing, a second, third, and fourth. That is about all, and first clothing.

Q. As a matter of fact, are there not only two classes of wool among Exhibits 1 to 13, as fine and medium?

A. There are several classes.

Q. What, besides fine and medium?

A. There is merino—there is some lower wools; there is some wools that may be high quarter; there are five or six.

Q. Will you take Exhibit 3, please, and will you tell us what blood that is?

A. It is low three-eighths.

Q. That is a low three-eighths combing, is it not?

A. Yes.

366 Q. Are there also three-eighths clothing wools as known among woolmen?

A. I should think there are.

Q. As a matter of fact, you know there are; don't you?

A. I don't dispute you; yes.

General Appraiser McCLELLAND. Do you know?

The WITNESS. Yes; but to me it is all irrelevant.

General Appraiser McCLELLAND. You are not to determine that part; you answer the questions.

Q. The distinction between low three-eighths combing and low three-eighths clothing is one of length of staple, it not that true?

A. Yes, sir.

Q. Please take Exhibit 4 and tell us the blood, please, after you have made a sufficient examination?

A. That is also a low three-eighths.

Q. And the same answers apply to that as did to the previous low three-eighths?

A. Yes.

Q. Please take Exhibit 5; what blood is that?

A. That is a 70's Australian merino wool.

Q. What would that wool be known as in the terms of the United States blood?

A. That would be fine.

Q. Fine what?

A. You have a term called "delaine" here.

Q. Fine combing?

A. Yes.

Q. Are there not also fine clothing wools known to the wool dealers, of the same blood and quality?

A. Yes, sir.

Q. And that differ only in the length of staple?

A. That is all.

Q. Will you take Exhibit 6 please; what blood is that?

A. That is Australian merino; 60/64 we would call it.

Q. What would you call it in American terms?
A. We should call it fine.
Q. And the same distinction applies to that as applied to Exhibit 5 about which you previously testified?
A. Yes.
Q. Take Exhibit 7 please?
A. That is Australian merino wool.
Q. Fine?
A. Yes.
Q. That would be called fine, according to the American grade?
A. Yes, that is right.
Q. The same answers apply to that as did the previous, fine: is that not so?
A. Yes.
Q. Take the Exhibit 8; what is that, please?
A. That is a fine Australian.
Q. In terms of American it would be a fine combing?
A. Yes.
Q. And it has it counterpart in shorter staple called fine clothing?
A. Yes.
367 Q. Take Exhibit 9 and please give us its grading in American terms.
A. Fine.
Q. Fine combing?
A. Yes.
Q. The same distinction holds true, there is a fine clothing of the same quality but of shorter staple?
A. Yes, sir.
Q. Exhibit 10.
A. Fine.
Q. Fine combing?
A. Yes, sir.
Q. It has its counterpart in the shorter staple?
A. Yes, sir.
Q. Which is known as fine clothing?
A. Yes, sir.
Q. Exhibit 10-A.
A. That is fine.
Q. Fine combing?
A. Yes, sir.
Q. It has its counterpart in shorter staple?
A. Yes, sir.
Q. Which is known as fine clothing?
A. Yes, sir.
Q. Take Exhibit 11.
A. That is a high quarter.
Q. High quarter combing, is it not?
A. Yes.

Q. It has its counterpart in high quarter clothing of shorter staple?
A. Yes.
Q. We have had twelve. Have we had thirteen? Take Exhibit 13; what blood applies?
A. That is a three-eighths.
Q. Three-eighths; that is a three-eighths combing, is it not?
A. It is a three-eighths, and you can call it either.
Q. You think that is either a combing or clothing?
A. Yes; if there is a wool man in the room he would not know whether to call it combing or clothing.
Q. With the exception of Exhibit 13, all the remaining twelve are commonly, among wool men, designated as combing wools?
A. Among wool men they are combing wools.
Q. And among wool men they are not commonly designated as clothing wools?
A. Among wool men they are all clothing wools.
Q. Are they so designated?
A. Technically, no; they are all clothing wools.
Mr. STRAUSS. I move to strike that out. The bias of the witness is so apparent.
The WITNESS. I told you they were called clothing wools before.

By General Appraiser MCCLELLAND:

Q. It is not a question of technically; it is what, usually, among wool men?
A. Usually combing wools.
Q. What about the counterparts of these samples that you spoke of as the short-staple wool; how would they be known among wool men?
Q. Either woolen or clothing.
Q. What are they most commonly called, clothing wool?
A. Yes; they would be called clothing.

368 General Appraiser BROWN. If you had been buying one of these wools and you wanted some more of them, how would you describe them when you wrote to cover your order?
The WITNESS. I just describe that I wanted some half blood, or fine, or three-fourths blood—I should never ask for combing or clothing, but I should know what I want.

By Mr. STRAUSS:

Q. As a matter of fact, you would not buy wools without seeing them?
A. No; I would not.
Q. Now, then, you spoke of wools, whether they be clothing wools or combing wools, as being clothing wools. You meant that they were used in the manufacture of yarns to make cloth that very largely ultimately went into clothing; isn't that the idea?
A. Yes.
Q. You are referring to the use of those wools?
A. Of those wools; yes.

By Mr. HOPPIN:

Q. Mr. Drake, you are a large importer of wool, are you not?

A. Yes, sir.

Q. You have imported it in very substantial quantities?

A. Yes.

Q. Can you say, roughly, the amount of wool which you import in the course of a year?

Mr. STRAUSS. I object to that as immaterial. It seems to be a belated attempt to bolster up his case.

General Appraiser MCCLELLAND. What is the purpose of this, Mr. Hoppin?

Mr. HOPPIN. I want to show, your honor, that he is a substantial importer of wool.

Mr. STRAUSS. He has so stated.

General Appraiser MCCLELLAND. He has so stated: I think he said that he dealt in 20,000,000 pounds a year.

Mr. STRAUSS. He said that he bought 20,000,000 pounds at one time.

The WITNESS. I have said we could sell twenty millions at one time or buy twenty millions at one time.

General Appraiser MCCLELLAND. There is no trouble about the volume of the business.

Mr. STRAUSS. Mr. Hoppin has asked me if it would be agreeable to us to suspend the wool case and go back to the noils case so that Mr. Drake's testimony can be taken in the noils case so as to enable him to get away.

General Appraiser MCCLELLAND. There is no objection.

369 JAMES W. KELLY, a witness for the United States, who had been previously sworn, was recalled and further examined as follows:

By Mr. LAWRENCE:

Q. Mr. Kelly, you are the examiner of wool at the port of Boston?

A. Yes, sir.

Q. For how many years have you performed those duties?

A. Five years.

Q. During that period have you examined pratically all wool imported at the port of Boston?

A. Well, since the enactment of the emergency act, I would say, yes; practically all.

Q. Prior to that, what was the situation?

A. Well, most of it was on the free list, and it was examined sometimes by me and sometimes by the wharf examiner.

Q. How long have you been familiar with wool in any capacity?

A. Well, since 1911, examining samples in great quantities at the parcel post.

Q. What kinds of wool are imported at Boston, in regard to uses?

A. In regard to uses, clothing wool and carpet wools.

Q. Is Boston generally recognized as a large clothing-wool market?

Mr. STRAUSS. I object to that: to the whole line of questioning. What is the materiality?

General Appraiser MCCLELLAND. So far as this witness has been shown, only in examining wools.

Mr. STRAUSS. In 1913 and 1921, in his official capacity: he has had no connection with grading them.

General Appraiser MCCLELLAND. Objection sustained, unless the witness is further qualified.

Mr. LAWRENCE. Exception.

Q. Mr. Kelly, prior to May, 1921, did you have occasion to sort or classify wools?

A. No; only in a very limited sense: in a very general sense.

Q. Did you have occasion to handle wools in the way which would acquaint you with the qualities and characteristics of imported wools?

A. Only in so far as the way that the samples come along, and what they were designated.

Q. Did you examine them for the purpose of determining their qualities and characteristics?

A. Not to any great extent.

Q. Since May 28, 1821, I understood you to say you had examined all wool imported at the port of Boston?

A. Practically all; yes, sir.

Q. Has that included both clothing and carpet wools?

370 Mr. STRAUSS. I object. It has not been shown that this witness has any knowledge of the terms clothing or carpet. It is putting words into his mouth without qualification, and furthermore, qualifications have to go prior to the enactment of the tariff, and this witness has said that he has had no occasion to do it since May, 1921.

Mr. LAWRENCE. Since 1921 the witness has examined all wool imported at Boston. That has necessarily obligated him to distinguish between clothing wool and carpet wool; otherwise he could not have made the classifications.

General Appraiser MCCLELLAND. He may have classified them all right; he may have classified them, half of them right and half of them wrong.

Mr. STRAUSS. If he had classified them right, we would not be here.

Mr. LAWRENCE. That is rather a bold statement. I ask that that remark be expunged from the record.

Mr. STRAUSS. I said if he had classified them right we would not be here. Our very protests are based on that.

General Appraiser MCCLELLAND. He might have classified them right and he would still be here. You have not in all your efforts to show that the classification was wrong been successful. Objection overruled.

Mr. STRAUSS. Exception.

Mr. LAWRENCE. I have made a motion to expunge the remark from the record, and I would like that motion passed upon.

General Appraiser McCLELLAND. I think that is entirely gratuitous.

Mr. STRAUSS. Personally, I don't think it has any business in the record at all.

General Appraiser BROWN. It is not offensive if it is there.

Mr. LAWRENCE. It might not be offensive to you, but it might be to the witness and to me.

General Appraiser McCLELLAND. This record is a photograph of what takes place here.

Mr. STRAUSS. If either Mr. Witness's or Mr. Lawrence's feelings are hurt, I will be very glad to expunge it from the record.

General Appraiser McCLELLAND. If counsel withdraws his remarks——

Mr. STRAUSS. I will withdraw them.

A. Yes.

Q. Which have been imported in the greater quantities?

Mr. STRAUSS. I object to that as immaterial.

General Appraiser BROWN. I do not see the bearing of that.

371 Mr. LAWRENCE. It may be more apparent when the case is decided.

General Appraiser McCLELLAND. I think this is an answer that would neither help nor hurt either side. Objection overruled.

Mr. STRAUSS. Exception.

A. I could not say.

Q. Have you any knowledge of the approximate quantity of wool other than carpet wool imported at Boston?

A. Yes, for a certain time.

Q. We will say during the period of the emergency act?

A. Not the whole of it.

Q. For any part of it?

A. Yes.

Q. What part?

A. From the 1st of February to the 21st of September of this year.

Q. What is that information based upon?

A. From statistics of the customhouse.

Q. Have you acquired that knowledge in your official capacity?

A. Yes.

Q. Approximately what quantities have been imported during that period?

Mr. STRAUSS. I object to that as immaterial. It is hearsay—acquired from statistics not compiled by this man.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception.

Q. Mr. Kelly, in your official capacity can you state approximately the quantity of wool imported at the port of Boston from February to July of this year, exclusive of carpet wools?

Mr. STRAUSS. Objected to, on the same grounds as previously stated, being the same question, only in another form.

General Appraiser McCLELLAND. It is the same question. Can you, yes or no.

The WITNESS. Only in a general way.

Q. Well, that is sufficient for my purposes: what is it?

Mr. STRAUSS. I object to that.

General Appraiser McCLELLAND. Objection sustained.

Q. Mr. Kelly, have all the invoices come before you of imported wools during this period?

A. Yes, sir.

Q. Have you observed the quantities of wools imported from week to week?

A. I have not tabulated them.

Q. In a general way?

A. Yes.

Q. Are you prepared to say whether the quantity imported during the life of the emergency act, based upon your own knowledge, would exceed one hundred million pounds or would be less than that?

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A. Yes.

Q. Would it be over one hundred million?

Mr. STRAUSS. I object to that as incompetent, irrelevant, and immaterial.

General Appraiser McCLELLAND. Yes or no.

A. Yes.

Mr. STRAUSS. Did your Honor mean to allow that question in the face of your ruling before, that he was permitted——

General Appraiser McCLELLAND. You objected on the ground that he was basing his answer on figures that were compiled by somebody else.

Mr. STRAUSS. I further objected on the ground that it was immaterial.

General Appraiser McCLELLAND. Judge Brown dissents from the ruling. He thinks that it is material.

Q. Having examined all the wool imported during the emergency act of 1921, did you become familiar with the quality and character of the wool itself?

A. I should think so.

Q. What percentage of each invoice came before you for examination?

A. Well, they sent one of each mark. If you want it in percentage I could estimate it around 10 per cent, I should say.

Q. Based upon your examination of all the wool imported during that period, can you tell us whether it was of a type of quality of staple comparable to that represented by the exhibits in this case?

Mr. STRAUSS. I object strenuously to any testimony as to other wools not involved here. It is trying to show that a certain quality

which we have nothing to do with is the same or different from what we have here.

General Appraiser McCLELLAND. Objection sustained.

Mr. LAWRENCE. Exception. I would like to ask the board to withdraw that ruling and suspend ruling on this question until it decides the case. I may modestly say, I think that I have given this subject as much study as anyone, and that I fully believe that it is a very material question.

General Appraiser BROWN. Won't you give us the reasons for that now?

Mr. LAWRENCE. I would rather not: the case is not closed.

General Appraiser BROWN. We can't base our ruling on anything that is not before us.

Mr. STRAUSS. Evidently it is desired by our friend to hammer a nail in to hang on to his brief.

373 General Appraiser McCLELLAND. I don't see how that would affect the outcome here. The only thing that this board has to determine is the classification of wool before it.

Mr. LAWRENCE. I think the answer to the question which I propounded would aid the board very materially in deciding the case at issue. I might be wrong, but it is a very important thing.

General Appraiser McCLELLAND. We can't change our ruling.

Mr. LAWRENCE. I offer to show that the witness, if permitted to answer, would state that wools imported at Boston during the life of the emergency tariff, excepting the carpet wools, were to the extent of 90 per cent importations comparable in character and quality and staple to the exhibits in this case.

General Appraiser McCLELLAND. That is all right: go ahead.

Mr. LAWRENCE. That will save an exception to your honor's ruling?

General Appraiser McCLELLAND. Certainly.

Q. In specifying exhibits in my statements, Exhibits 1 to 12, Mr. Kelly, have you examined the invoices which are the subject of these proceedings?

A. Yes.

Q. Did you notice upon the invoices certain lead pencil notations?

A. I did.

Q. Were those notations on the invoices when they came to you for examination?

A. They were.

Q. The notations I had in mind were in black lead pencil?

A. Oh, yes, yes.

Mr. STRAUSS. Did all of those invoices have those markings that you refer to?

The WITNESS. No.

Mr. STRAUSS. Only some of them?

The WITNESS. Some of them.

General Appraiser McCLELLAND. How is this going to affect the issue, as to the markings?

Mr. HOPPIN. That is all of this case: the Government rests.

Mr. STRAUSS. We rest.

Mr. LAWRENCE. That concludes 942570, 942569, 952179, 951310, 953320, 944808, 950402.

General Appraiser McCLELLAND. Do you want to file briefs in the wool case?

Mr. LAWRENCE. Oh, yes; I think at least five, on the other side.

Mr. LOCKETT. We promise not to file five briefs. We would like to have 30 days after the testimony is finished.

Mr. HOPPIN. And the Government 30 days for a reply.

374 General Appraiser McCLELLAND. Why 30 days for a reply; why any more time for the Government?

Mr. HOPPIN. Because it is the customary thing.

General Appraiser McCLELLAND. I will give you both 30 days for a brief after the testimony has been transcribed.

Before Board of United States General Appraisers

Decision

February 20, 1923

In the matter of protests 942570, etc., of Stone & Downer Co. et al. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1

BROWN, *General Appraiser:*

This suit was brought at the port of Boston under the legal procedure provided by the customs acts by protest against the action of the collector of customs at that port, claiming that in collecting duty under the so-called emergency tariff act upon certain wool and manufactures of wool he had acted illegally and asking judgment for refund of the duty so levied.

The classification protested was made under paragraph 18 of the emergency tariff act of May, 1921, which reads:

"Wool, commonly known as clothing wool, including hair of the camel, angora goat and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. * * *"

The importers claim that the wool is entitled to free entry under paragraph 650 or 651 of the act of 1913, and the manufactured goods dutiable under paragraph 290 or 291 of the act of 1913 at 35 per cent only.

The case has been hotly contested and ably briefed. The trial was had principally at Boston and finished by transfer at New York.

A number of distinguished witnesses (including a learned United States customs examiner of wide trade experience) skilled in various phases of the wool trade testified, some of them called by the importers and some by the Government. Their testimony, frankly and fully stated, covers a voluminous record of nearly 500 pages.

Taking the case in all its aspects it appears:

First. That in the custom of the trade in speaking of wool, the term "clothing wool" covers short-staple wool which is
375 suitable for carding and which goes into what is known as the woolen or felting process principally for making clothes of that character and that the term "combing wool" covers wool of longer staple which goes into another process known as the "worsted process," principally for making worsted clothes.

Second. That development of the French combing machinery has caused wool of shorter staple than formerly to be capable of being made into worsteds.

Third. That the line of demarcation is not absolutely certain as some wools are capable of manufacture into both "woolen" and "worsted" clothes and that conditions of price of various grades of wool and other trade conditions sometimes cause border-line staples to be used now in the one, now in the other process.

Fourth. That the definitions in the principal dictionaries and encyclopedias generally make exactly the same distinction between "clothing wool" and "combing wool" as stated by the wool traders. One of them, however, states the distinction as if between "carding" and "combing wool" (see Century Dictionary (1891), under "wool," p. 6971) and two profess in some definitions to be giving the *commercial* distinctions (see New Standard Dictionary (1915), p. 2729, and New American Encyclopedia (1863), p. 542).

Fifth. That both clothing wool and combing wool are largely grown here, but that very little "carpet wool," an inferior grade coming mostly from neglected flocks, is grown in the United States.

Sixth. That the samples before us of the wool in question are all commercially combing wool except No. 13, which may contain both carding wool and combing wool and be used possibly in both the woolen and worsted process.

The question turns upon the intention of the Congress in using the words in paragraph 18, "commonly known as clothing wool." Whether, on the one hand, they intended to include only wool carded in the woolen or felting process principally for making clothes of that character, excluding wool carded and combed in the worsted process used principally for making clothes of a different character, as claimed by the importers, or whether, on the other hand, the Congress meant to include all wool the principal use of which was for making clothes, either by the woolen or the worsted process, in effect all wool but the specially excepted and inferior carpet wool, as claimed by the Government.

The question is full of difficulty and not easy of confident solution.

If it turned upon commercial custom in designating wool in the trade, the testimony in the record of wool tradesmen making a clear and certain trade definition would limit "clothing wool" to
376 "carding wool" and exclude the "combing wool" before us. The Government witnesses are in substantial agreement with those of the importers as to this. But we hold that a classification by commercial definition is excluded by the use of the word "commonly" in the expression "commonly known as clothing wool."

Nor do we think that any common meaning of the term "clothing wool" can be derived here from the testimony of the commercial witnesses, for they with one accord substantially agree that the terminology they expounded, even where they endeavored to call it "common meaning," was the result solely of their knowledge and experience in dealing with wool in trade. Why, indeed, would they or anyone else speak or deal with it otherwise than in trade?

In the terminology of the kitchen, or table, cooks, or housewives, or those eating food may give a common meaning to the term "beans" in their ordinary handling use, or consumption of that article which would be admissible as proof of the *common* meaning as in Robertson *v.* Salomon (130 U. S. 412 at p. 414). There the Supreme Court held that testimony of such common meaning was wrongly excluded by the trial court. Doubtless there are many articles subject to tariff taxation where this is true and where the common meaning could be proved by witnesses entirely unfamiliar with trade or its nomenclature—but wool is not such an article. No one would speak of or talk about wool in its raw state except the tradesmen or farmer raising or selling, or buying to resell, or to manufacture. There is no use or consumption of the article itself other than by tradesmen as there was for "beans," for instance, in Robertson *v.* Salomon, supra.

In these circumstances the dictionaries and encyclopedias necessarily must (as some do expressly) incorporate this commercial understanding of the terms "clothing wool" and "combing wool" into their descriptions of wool having no other source than the commercial from which to acquire definition of wool terms.

This leaves us to determine the common meaning of the term "clothing wool," or rather to determine the intended meaning of the expression "commonly known as clothing wool," as Congress has used it here, outside of any commercial nomenclature and with little or no light thrown upon it by the dictionaries.

As before stated, the use of the words "commonly known" can have no other purpose than to expressly exclude commercial definition, usually the primary and controlling factor in customs classification. "Commonly" does not mean commonly known in the trade, but imports a definition in the mind of the Congress outside the trade practice and presumptively different therefrom. Otherwise there could be no purpose in using the term.

377 The so-called commercial testimony, then, was not admissible in this case to show a commercial definition of the term

"clothing wool" and could only have been admitted at the trial on the theory that common meaning may sometimes be gathered incidentally from the testimony of tradesmen expounding the commercial nomenclature from their trade experience. If that can ever be a sound basis for tariff classification, we hold it is clearly not applicable to the facts and circumstances of this case. (See Erhardt *v.* Ullman, 51 Fed. 414.)

At any rate so far forth as the testimony before us merely gives the custom of tradesmen in handling wool in trade to make up a commercial definition it must be now excluded from consideration.

The expression "common meaning" as used in tariff classification denotes the determination of the congressional intent from whatever sources otherwise than by commercial designation when no commercial definition is proved or when the commercial custom of designating the goods is expressly excluded from consideration by the language used.

Such common meaning can not be derived from the testimony of tradesmen buying, selling, or handling in the trade goods which in the nature of the case are not handled by the general public.

We must then, seems, here substantially ignore the dictionary definitions as well as the testimony concerning commercial nomenclature and derive the intent of Congress in using the term "commonly known as clothing wool" from the context, from the title of the act, from the general provisions and purposes of the whole act, and from the circumstances surrounding its passage so far as they throw any light thereon.

The inclusion expressly of "hair of the camel, angora goat, and alpaca," which the record shows are largely if not entirely combed in the worsted process and not merely carded in the woolen process and yet which largely go into the making of clothes, tends to indicate an intent to include in the expression "commonly known as clothing wool" (to which they are associated in levying this emergency tax) something more than the wool which is carded only, goes into the woolen process, and is largely used for making woolen as distinguished from worsted garments.

Again the fact is shown by the record that the improvements in combing machinery have changed and continue to change the distinct line of demarcation between carding (commercially "clothing") wool and combing wool, and that there are some wools which may be carded for the woolen process and also carded and combed for the worsted process. This would indicate that Congress did not mean to use such an uncertain distinction, probably leading to great difficulty in administration, as that between carding (or clothing wool) and combing wool; and indicates a use of the expression "commonly known as clothing wool" in a broader and more inclusive sense.

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The title for the act in question reads:

"An act imposing temporary duties upon certain agricultural products to meet present emergencies, and to provide revenue, etc."

The general purpose of the act, as well as the character of its schedules, limited to products of our land and articles competing therewith or manufactured therefrom, in conformity with the purpose thus expressed in the title in the circumstances supposed to exist at the time of its passage, namely, to specially protect wool-growers (as well as other farmers), which purpose would in considerable part fail if it did not so protect with a high duty the growers of long-staple wool of the combing variety, tends also to compel a broad construction of the term used.

Further, the special exception of carpet wools, an inferior class, little or none of which is grown in these United States, and which, therefore, under the theory and purpose of the bill needed no protection in the emergency sought to be covered, would naturally and fairly infer a congressional intent for the use of the words "commonly known as carpet wool" in a broad sense to include all wool whether carded or combed which ultimately by principal and primary use goes into the making of clothes.

Taking all these circumstances and matters into consideration, while admitting that this case of first impression is not altogether free from difficulty, we are nevertheless constrained to the conclusion that Congress intended, by the term "commonly known as clothing wool," in paragraph 18, to tax all imported wools at the rates therein enumerated except those that are commonly known as carpet wools, and by paragraph 19 to similarly tax the manufactures made of such wools.

It follows, therefore, that judgment order should issue overruling all the protests before us, which is accordingly done.

It becomes necessary to add that no reliance is placed on any supposed theory that the free list is a privilege and that therefore there is a presumption in favor of the tax as against such privilege or special exemption. The authorities cited by Judge Sullivan in his concurring opinion do not sustain such a rule. On the contrary, all the cases, those which deal with claims for free entry, as well as those which deal with claims for lower duty, concur in holding that there is a presumption of law in favor of the citizen against a doubtful tax and make no such distinction between the free list and the dutiable list.

379 Note the following cases (among many others in the books) where a doubt was resolved in favor of the importer on a claim for free entry: Benziger *v.* United States (192 U. S. 38); Hartranft *v.* Weigmann (121 U. S. 609); Powers *v.* Barney (Fed. Cas. No. 11361, 5 Blatch. 202); United States *v.* Wigglesworth (Fed. Cas. No. 16690, 2 Story 369); United States *v.* Golden Co. (9 Ct. Cust. Appls. 229; T. D. 38201); Trinidad's case, G. A. 7241 (20 Treas. Dec. 1385); Jackson & Co.'s case, G. A. 5187 (5 Treas. Dec. 615).

It was only after careful consideration of the effect of that rule and after giving it full weight that the mind of the writer in con-

sidering all phases of the case was constrained to the conclusion above arrived at in spite of it.

GEO. STEWART BROWN,
General Appraiser.

CONCURRING OPINION

SULLIVAN, *General Appraiser:*

The merchandise under consideration is wool, assessed with duty by the collector under paragraphs 18 and 19 of "emergency tariff act," approved May 27, 1921.

It is claimed by the protestants in a number of protests the merchandise is not dutiable under paragraph 18 of said act, but falls under paragraphs 650, 287, and 288 of the tariff act of 1913.

It is not necessary to set out in detail each individual protest. The principle involved in each protest is practically the same.

Broadly stated, the real and controlling question is whether or not the wool under consideration, covered by Exhibits 1 to 14, inclusive, is what is known as "wool, commonly known as clothing wool." Upon the settlement of that question the protests contesting the classification under paragraph 19 are easily solved.

It is contended in the first instance by the Government that all wools are dutiable: that by the terms of the emergency tariff act but two wools are known to the law—wools commonly known as clothing wool, and words commonly known as carpet wools: that differentiating with reference to combing and carding wools and woolens and worsteds is not material: that the intention of Congress was to tax all wools imported, except the class that would fall under the term "commonly known as carpet wools."

We, therefore, at the very outset, must ascertain what are the facts relative to these terms, and what the evidence discloses.

Mr. Harding testifying, divided the merchandise into practically eight groups: (1) Fine combing wool, (2) fine clothing wool, (3) medium combing wool, (4) medium clothing wool, (5) low
380 clothing wool, (6) low combing wool, (7) carpet combing wool, and (8) carpet clothing wool.

His distinction between clothing and combing wool is stated as entirely length of staple: that a wool of sufficiently long staple to be suitable for worsted purposes is a combing wool: a wool of staple not of sufficient length for worsted purposes is a clothing wool: that this is a fundamental distinction and generally uniform. There is also a question of blood involved in the character of the wool, and many woolmen ascertain differences by means of the blood of the animal.

It is further stated there is a difference in wool that can be combed: that some wools are combed to-day that were not combed 40 years ago, indicating that a shorter fiber is used for worsted purposes as more efficient machinery is used in combing.

Mr. Bennett, a witness who testified on behalf of the importers, stated that wools are fine, medium, and coarse, and, according to their suitability for use in particular industries, are divided into clothing and combing wools. He was asked to designate clothing wools, and what constitute such, and answered:

"It is rather a difficult thing to answer. Each lot of wool stands by itself, and it has an individuality, and therefore to answer clearly and definitely, I would prefer to see a sample; to see the wool itself."

He further testified:

"Well, a clothing wool in a fine wool would be shorter than it would be in a medium wool, and the clothing in the medium wool be shorter than it would be in a coarse wool."

These definitions are the classifications of woolmen in their sales of wool to the mills. In reality it is merely a grading of the wools, adapting a certain grade to one particular use rather than another.

As to the merchandise in question, Exhibits 1 to 14, inclusive, he states some of them are fine, some medium, and some coarse. Then he testifies:

"Q. So that those three terms as applied to those wools, Exhibits 1 to 13, inclusive, are wools that are commonly used in making clothing?

A. Clothing and many other fabrics."

Here is the positive statement of a witness that this merchandise is used in the making of clothing, and undoubtedly must fall within the term of clothing wool.

The witness Dyson testified he was an assorter of wool and divided them into classes. We quote the following from his testimony:

"Q. In the sorting of wools do you classify them into the two classes you have previously testified to, combing and clothing wool?

"A. You get more or less clothing out of all the wool that you have.

"Q. All original wools you are speaking of?

"A. Original wools."

381 As to the purpose in separating the clothing from the combing wools by this process he testified:

"To keep the short wool to itself and the combing wool to itself."

Mr. Pratt divides the wool into fine, medium, and coarse, or broadly speaking, combing and clothing wool. He further testifies:

"Q. Well, give me a few of these grades, please, other than carpet wools.

"A. An order may be received for a merino combing wool, or a merino clothing wool, and we have received orders for a medium combing, and at times for a medium clothing.

"Q. Merino medium clothing?

"A. Medium clothing, yes.

"Q. And does that indicate that the merinos are used for both combing and carding purposes?

"A. Yes.

"Q. In one even the wool would be for making worsted yarns and in the other for woolen yarns, I take it?"

"A. Yes, sir." (Record, p. 124.)

The merino is an excellent wool—one considered in the first class—yet the testimony indicates it is used for either purpose, clothing or combing. It means that the designation of combing and carding wool, as expressed by the witness, is a process used in the making of finer clothing; but that all the material used is wool; and that all the product derived therefrom in clothing is unquestioned.

There is an additional distinction that the grade of the wool is ascertained according to its blood and its count—the counts running from thirty-six's to eighty's and ninety's. This grading is to assist the mill or the manufacturer in making the quality of cloth that he desires, and that will meet the market of such manufacturer or mill. It is arbitrary in the sense that it is made by the mill men, or those engaged in the sale of wool going into certain types or classes. It does not indicate in fact that it is not a clothing wool. That such is a fact is further testified to by Mr. Pratt, as follows:

"Q. Do you know what those mills are engaged in producing?

"A. Many of them are engaged in producing various kinds of cloth.

"Q. For clothing?

"A. I presume so."

The witness Avery summarizes in a few words the real distinction between woolen and worsted clothing, as follows:

"Q. Why do the clothing wools, then, go to the woolen system and the combing wools to the worsted system? What is there in those processes that makes one desirable for one system and the other for the other? * * *

"A. The worsted system is the advanced and approved system of manufacture of wool, and it requires a strong, healthy, sound, well-grown wool." (Record, p. 115.)

This answer could not be improved upon. It is the approved system that manufacturers of cloth have as to where one class of wool should go.

Now, if the law specifically taxed wool that went to the worsted mill at a rate different from that which was used by the woolen
382 mill, there would be something in the contention of the protestants. The differentiation of the manufacturer does not change the fact that he is using wool, and that if he receives a better grade of wool to-day than to-morrow he can use it as his judgment dictates.

Mr. Avery further testifies:

"The grading of wool is the handling of the original fleece as it comes from the sheep. The sorting is the separation of the fleece into its different qualities. There are different qualities on every sheep. Some breeds of sheep are different from others."

* * * * * * *

"Q. In general you would say that combing wools are higher priced than clothing wools?

"A. Yes."

Now, applying this last answer to his further statement that there are different qualities on every sheep—in other words, that there is a combing and carding wool on the same animal in one fleece—does it not become ludicrous, in construing this taxing law, to differentiate between carding and combing wool, when Congress did not see fit to make such differentiation?

General Appraiser McClelland put the following question to this witness:

"Q. Just for my benefit, will you tell me what you mean by the term 'clothing purposes?'"—

and he replied:

"A. Manufacture of various fabrics for wearing—underwear, wool goods, cashmeres and serges, and various kinds of goods."

His testimony then continues as follows:

"Q. Now, have you—gentlemen such as you who are engaged in the business of trading in wools—a meaning of your own for that term?

"A. Clothing wool?

"Q. No, "clothing purposes."

"A. The meaning would be wools that were unsuitable for combing—undesirable for combing.

"Q. That meaning would only be known to a wool man, of course?

"A. I suppose so. It is not only the quality but the healthiness of the fiber. The worsted process requires a strong, tested wool—tested by hand and then by machine."

Here we have *not* the common understanding of clothing wool, but the expert meaning of a few men who are engaged in manufacture, or in knowing the wish of the manufacturer. That is not the common meaning, nor does it disparage the common meaning. It is a differentiation had among themselves for the making of clothing articles.

Mr. Stone testified that wool is used for numerous articles.

"Q. That is ultimately for clothing, is that right?

"A. That may be ultimately for anything. It may be used for blankets, felts, wearing apparel. There are a great many different uses for wool.

383 "Q. Will you answer this question: Are they largely, if not chiefly, used in the manufacture of clothing? Are they or are they not?

"A. To answer that accurately I should have to see the statistics of the manufacture of wool in the United States." (Record, p. 166.)

Can we base a finding that Congress did not intend to tax this wool on such testimony—that before one of these experts—who is seeking to place a meaning upon an act of Congress—can not

say whether wools are largely if not chiefly used in the manufacture of clothing unless he consults the statistics of the United States? The clear intent of the emergency tariff act can not be overridden by that class of testimony.

Mr. Fawcett, a witness called on behalf of the Government, testified:

"Q. Based upon your personal experience and knowledge, will you state into what divisions wool is commonly divided? * * *

"A. Carpet wools and clothing wools.

"Q. How long has that been true to your knowledge, Mr. Fawcett—those two divisions?

"A. As long as I have been actually engaged in the business. (Record, p. 191.) * * * As we make them in the pools and in the trade, they are known as delaine fine staple, fine, fine medium, half blood, three-eighths blood, quarter blood, low quarter, common blood, cots, and various grades.

"Q. And in connection with what of your duties are these various subdivisions used? That is, applying to the statement that you graded, sold, and handled wools?

"A. They are used as a guide to prepare these grease wools for the commercial market."

* * * * * * *

"Q. What is the dominant factor in the purchase of wool, Mr. Fawcett, in your experience?

"A. The diameter of the fiber."

These quotations from the witness's testimony characterize the wools in question as coming within the common and ordinary meaning—namely, for the making of clothing.

The distinction of carpet wools as being without the class of clothing wool is not entirely a commercial differentiation. It is a legal differentiation, and if it was not excluded by the tariff act it would fall within the purview of paragraph 18, emergency tariff act, as being dutiable as wool, commonly known as clothing wool.

This witness, referring directly to the exhibits in question, testified as follows:

"Q. And can you state from your experience, as to whether the wools, Exhibits 1 to 13—for what purpose the wools Exhibits 1 to 13—would commonly be used?

"A. Yes.

"Q. What would their use be?

"A. For cloth and clothing purposes commonly."

It is evident by the testimony that there is a method known as "French combing." This efficient scientific method uses a wool that the Bradford mills or those of this country have so far been unable to do. It illustrates the further fact that the combing and
384 carding of wool may ultimately become a question of efficiency of machinery and not the length of the staple.

Mr. Wilcock, a gentleman of large experience, following the wool from the fleece into yarns, and into the mill, observing the weaving and the cloth derived therefrom, stated, with reference to the purchase of wools—

"I mean buying them as they come from the sheep without classification. That is, the original wools. We buy other wools which we classify in the primary markets before shipment."

* * * * * * *

"Q. Suppose it comes from Australia?

"A. We grade it into English counts, which range from 28 to 80, the 80 being the finest wool and the 28 the lowest wool."

This illustrates another demarcation that mills and manufacturers make relative to wools. They are not entirely talking of worsted yarn and woolen yarn. They are talking of counts, but always with reference to the one material, namely, wool.

Mr. Wilcock further testifies relative to clothing wool (Record, p. 257):

"Q. Are you familiar with the term 'clothing wool'?

"A. Yes: from a commercial point of view clothing wools are short wools which are not long enough to comb under either the Bradford system or the French system. Wools commonly known as clothing wools are all wools, except carpet wools, which are used for the manufacture of garments or cloth."

The testimony of all the witnesses shows that each ultimately arrives at the conclusion of Mr. Wilcock, that there are but two wools as known by the law, viz., clothing and carpet wools; and that clothing wool is used for the manufacture of garments or cloth.

All this testimony sustains the proposition that the common meaning, as known to the ordinary man, is the meaning that Congress had in mind in the enactment of the statute, and that is the use of wool in the making of clothing.

It may be true that wools which are combed are likely to go into what is called the "worsted system," and carded wools into another class; but the law did not differentiate in that respect. The law said, "Wool, commonly known as clothing wool."

Mr. Wilcock further testified:

"Q. Now, when you state—I think I am quoting you correctly—that wools commonly known as clothing wools were wools used in the production of clothing, is that correct?

"A. In the manufacture of garments for clothing purposes.

"Q. When you said "commonly known" you weren't referring to any practice in the wool trade, were you?

"A. No.

"Q. Were you referring to the dictionary?

"A. I was referring to 99½ per cent of all the people of the United States of America.

385 "Q. Now, how do you know what 99 9/10 per cent of the people of the United States would say?

"A. I know what I think, that 99½ per cent of the people think they know what wool is like, and that is all they know about it." (Record p. 265.)

The above discloses that the witness is testifying to real facts. Ask the man on the street what wool is used for, and he will tell you "the making of cloth": 99½ per cent of men will so state. The other half per cent ought not to control and by reason of their own view to the use of wool attempt to destroy the law.

In reply to a further question by the general appraiser hearing the case the witness testified:

"Q. I understood you to say that the meaning of the term 'clothing wool' was first a commercial term, that which implied a distinction between combing and clothing; and secondly, that it had a broader meaning, which included all wools used in the manufacture of clothing, as distinguished from carpet wools. Do you adhere to that general definition?

"Yes." (Record, p. 272.)

Finally, as a complete summing up of Mr. Wilcock's testimony, he is asked this question:

"Q. Now, can you tell us, taking Exhibits 1 to 13, inclusive, what would be the common uses of those wools after they are made into fabrics?"

To which he replied:

"It is made into clothing." (Record, p. 277.)

Mr. Meadows testified on behalf of the Government with reference to this classification of wool:

"Q. What are the uses of the wool which you handle? * * *

"A. We sell wools that are known as combing wools to mills that make worsteds and wools known as clothing wools to mills that make woolens, generally speaking.

"Q. What is the difference between these two classes of wool that you have just mentioned?

"A. It is largely a question of length.

"Q. What is the real distinction; where is it drawn as to length?

"A. The line is indefinite. It is very often a case of availability and a case of what is profitable." (Record, pp. 281, 282.)

This witness reveals the intent of the manufacturer to use different grades of wool for different garments, but at all times the substance used is wool.

The witness further testifies with reference to the meaning of clothing wool as follows:

"The general meaning of clothing wool is wool that is adapted to clothing purposes, in contradistinction to carpet wools.

"Q. Do you mean the meaning of combing or clothing wools?

"A. Clothing wools.

"By General Appraiser McClelland:

"Q. Do you include in that general meaning wools that are known as worsted wools?

"Yes, sir.

386 "Q. But they would not be known, you say, within the trade usage of the term 'clothing wools'?

"A. The basic distinction is understood. A man does not come to our store and ask for combing. If you know he is a woolen manufacturer, if he says, 'Have you any 64's or 70's or 60's,' we show him what is technically called clothing wools." (Record, p. 294.)

Mr. Patterson testified with reference to clothing wools as follows:

"Q. Do you know for what purpose wools for worsteds and woolens are used?

"A. Yes, sir.

"Q. What purpose?

"A. Making clothing."

As to the meaning of clothing wool, he states:

"My understanding is that the term 'clothing wool' within this, means wools used to be made into clothing. The distinction of worsted and clothing wool is simply to grade those wools for the uses of the manufacturers to whom we sell them, to simplify the process of manufacture."

Mr. Blanchard's testimony as to the meaning of clothing wool is as follows:

"Q. But, Mr. Blanchard, whether the wool goes to the woolen mill or to the worsted mill for use in making clothing, under which classification would you put it, in the broad sense of the terms clothing and carpet wools?

"A. Clothing.

"General Appraiser McCLELLAND. What do you mean by 'the broad sense of the terms?'

"The WITNESS. Well, in the sense that wool is made into cloth, and cloth implies clothing, just as paint implies painting." (Record, pp. 353 and 354.)

Here is a concrete illustration of the finesse by which it is sought to differentiate this wool from the intent attributed to it by statute.

Mr. Ryder testifies that the count usually starts at 36 and rises as high as 80's; that in the domestic wools "blood terms" are used to indicate the quality; and that in both instances the numbers on the one hand and the blood terms on the other refer to the quality or fineness of the wool, and by fineness is meant the diameter of the fiber.

They exercise the right to ascertain what class of garment one quality of wool will make with reference to another, as wheat men to know the quality of flour made from Kansas or Red River Valley wheat; but it is all wool as it is all wheat, and is the basis of the product made therefrom.

With reference to commercial transactions in wool and their meaning, Mr. Ryder's testimony is as follows:

"Q. Have you ever heard in commercial transactions or in commercial usage in connection with the trade, the term 'clothing wool' ever used to have any other meaning than the short-staple wools, which you state go to the woolen system of manufacture?

"A. A great many wools are called clothing that are all combing lengths. Clothing is rather a broad term, and you will find a clothing mill or woolen mill buying wool that really is not clothing. On the other hand, you will find worsted mills buying what is called strictly clothing.

387 If this is true, and we have not any reason to doubt it, then what becomes, as a matter of law, of this differentiation that is sought in this case? If the clothing mill has designated it in the same way as the combing and worsted mill, viz, as clothing wool, then the distinction vanishes. It is ephemeral, and without any utility whatever.

Mr. Seaver, a man of wide experience with reference to the classification of wool, testified that Exhibits 1 to 13 are clothing wool, and are excluded from the class of carpet wools.

Mr. Drake, testifying on behalf of the Government with reference to the wools represented by Exhibits 1 to 14, inclusive, stated they were excluded from the class of carpet wool, and included in the class commonly known as clothing wool. (Record, pp. 463, 464.)

It is unnecessary to quote further from the testimony. It establishes in my judgment the following propositions:

First. That commercial designation, if an issue, has not been established.

Second. That the testimony does not change or modify the term "commonly known as clothing wool."

Third. That the designation "commonly known as clothing wool" applies to all wool with the exception of wool commonly known as carpet wool.

With these facts established, does the merchandise fall within paragraph 18 of the emergency tariff act, or is it exempt from duty under paragraph 650 of the tariff act of 1913? Paragraph 18 is as follows:

"18. Wool commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. * * *"

Paragraph 19 of the emergency tariff act is as follows:

"19. Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law."

In construing paragraph 18 it is necessary to consider paragraph 19. Both are part of the same act and stand in pari materia with one another.

Paragraph 650 of the tariff act of 1913, under which it is claimed the merchandise is free, is as follows:

"650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. * * *"

388 There is nothing in the emergency tariff act or in the act of 1913 classifying wool as clothing or worsted wool. The act of 1913 in unequivocal language placed upon the free list all wools with the exception of that referred to in paragraph 305, being the "hair of the Angora goat, alpaca, and other like animals, and all hair on the skin of such animals," and the merchandise described in paragraph 286, being "combed wool or tops and roving or roping made wholly or in part of wool or camel's hair, and on other wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for." The remaining paragraphs of the wool schedule of the act of 1913 have reference to the manufactures of wool into clothing, etc. Nowhere is there a division or grading or classification of wools such as is insisted on by counsel for the protestants.

It was the intention of the emergency tariff act to place a duty on all wool with the exception of carpet wool. A history of the legislation fully indicates such intent. We have a right to consider the history of the times in arriving at the intent of the legislature.

It has been held, beginning with Aldridge *v.* Williams (44 U. S. 9), in reference to the latitude allowed courts in ascertaining the intent of the legislature:

"In expounding this law the judgment of the court can not, in any degree, be influenced by the construction placed upon it by individual Members of Congress in the debate which took place on its passage nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

This is the first expression we have found by the court permitting looking into the history of the times in ascertaining the intent of the legislature.

We find a confirmation of this holding in United States *v.* Union Pacific Railroad (91 U. S. 72), wherein the court stated, at page 79: "* * * But courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it."

This was followed in United States *v.* Trans-Missouri Freight Association (166 U. S. 290), wherein the court stated, at page 318: "* * * the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the

history of the times when it was passed. * * * If such resort be had, we are still unable to see that the railroads were not intended to be included in this legislation."

389 The final authority permitting reference to history in construing a statute is Tilge *v.* United States (2 Ct. Cust. Appls. 129; T. D. 31662), wherein it was held that in the ascertainment of the intention of Congress in giving final shape to a law that had been a subject of contention, resort may be had to the current history of the times and of the particular piece of legislation in question.

The Tilge case may be an enlargement of the rule enunciated by the Supreme Court of the United States, but that it is in harmony therewith is unquestioned.

We may look, then, to the history of this legislation. The act of 1913 placed wool upon the free list without any discrimination between classes or grades. The emergency tariff act placed wool upon the dutiable list, and in doing so it used the term "commonly known as clothing wool." We find from an examination of tariff acts that this term was used in the act of 1883, Schedule K, where it was provided:

"All wools, hair of the alpaca, goat, and other like animals, shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

"Class one, clothing wools: That is to say, merino, mestiza, metz, or metis wool, or other wools of merino blood, immediate or remote, down clothing wools and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Aires, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

"Class two, combing wools: That is to say, Leicester, Cotswald, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat, and other like animals."

The third class embraced carpet wools and other similar wools.

It was provided by Congress that each of these classes should pay a different rate of duty, and in order to distinguish them the above terms were used and the blood of the wool was stated.

In the tariff act of 1894 wool was placed on the free list by paragraph 685, which was as follows:

"685. All wool of the sheep, hair of the camel, goat, alpaca, and other like animals, and all wool and hair on the skin, noils, yarn waste, card waste, bur waste, slubbing waste, roving waste, ring waste, and all waste; or rags composed wholly or in part of wool, all the foregoing not otherwise herein provided for."

Within a period of a little over 10 years the dutiable description of wools was changed and all wool was made free of duty.

In the tariff act of 1897 we find wool taken from the free list and again made dutiable in the manner stated in the act of 1883; that

is, wools were divided into three classes. In the act of 1897
290 the term "clothing wool" was eliminated, evidently purposely. In class 1 of that act the wool referred to is the merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote, and referring to such wools, as in the act of 1883, as coming from Buenos Aires, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, Egypt, Morocco, and elsewhere. In class 2 was placed the Leicesters, Cotswolds, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood; and in class 3 was placed the Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's-hair, etc.

Congress, in classifying wool for dutiable purposes under the act of 1897, did not use the word "clothing" or "worsted," but simply divided the wool according to grade or blood.

In the act of 1909 we find the same classification as in the act of 1897, being a division for the purpose of fixing duties based upon the blood, without any reference whatever to the nature of the article produced from such wool.

The act of 1913, of course, placed wool upon the free list, as found in paragraph 650.

With this history of legislation before us, as expressly by statute, we have the intent of Congress up to 1913 to have wools of all classes upon the dutiable list, the blood of the wool being the characteristic used to determine the rate of duty, without reference anywhere, since 1883, to clothing or carpet wool.

This being its history, the act of 1921, known as the emergency tariff act, was passed. What did it do? It stated in the very clearest terms that "wool commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools," are dutiable at a certain rate if unwashed, at a higher rate if washed, at a still higher rate if scoured, and at an additional rate if advanced in any manner or by any process of manufacture beyond the scoured or washed condition.

Was it the purpose of Congress by this act to place a duty on all wools, or did it exempt from such duties certain wools? How did it classify wool by this act? It did not follow the division of the acts of 1883, 1897, or 1909, in erecting three classes. It erected two, wool commonly known as clothing wool and wool commonly known as carpet wool. These are the two classes in the act of 1921. Carpet wool is exempt from duty. Having thus distinguished and placed upon the free list a certain class, it placed upon the dutiable list the entire line of wools outside the exempt class. That would include every blood and every grade. It mattered not into what it might be manufactured. The intent is clearly expressed in the act. It used the words "commonly known as clothing wool" advisedly. Has
391 that a significance? It did not refer to wool, commercially known as clothing wool. It did not state commonly or com-

mercially known. It refers to wool that entered into the manufacture of clothing, and does so by a clear, unequivocal statement. We have the right, under the authorities cited, to ascertain what was the intent of Congress in so doing, and we arrive at that intent from the language, assisted as may be, by the history of the times. The history of the times indicates Congress intended to place all wool upon the dutiable list. If we go as far as in the opinion of the Court of Customs Appeals in the Tilge case, supra, we could study the debates of Congress in order to ascertain the legislative intent. We are not required to do so. The intent of Congress is carried out in the language of the statute itself. It clearly by the exemption it made as to carpet wool, sought to place upon the taxable list all other wool. We can not be permitted to say that Congress did a foolish thing. If the contention of the importers is right, then Congress did a vain act, if, as they contend, all this wool is not clothing wool, and thereby remained on the free list.

The act of 1913 was not entirely repealed by the act of 1921. The remaining statutes with reference to the use of wool and the different articles in which it is manufactured which were in force when the act of 1921 went into effect are still in force if not contra to the act of 1921. It did repeal every paragraph of the act of 1913 that was inconsistent therewith. It is called an emergency act, and was deliberately enacted for the purpose, among other things, of taxing clothing wool. By the original act it provided a period when it expired. This period was afterwards extended and did not expire until the act of 1922 was enacted and passed into law.

The testimony offered, if for the purpose of establishing commercial designation, did not establish it. It is the rule of law that every tariff statute is subject to a commercial designation, and if it is established it may be applied to a statute even though contrary to the wording thereof; but, in order to establish commercial designation, of which this board can not take judicial notice, it must be uniform and general. The testimony establishes beyond question that it is not uniform and is not general. It is shown that upon the same fleece itself may be found what woolmen designated as clothing wool and worsted wool. The significant fact remains at all times that it is always wool. Therefore, when Congress said "clothing wool" it did not intend that such construction should apply to a certain class of clothing—to a flannel shirt and not to a worsted garment—both are clothing and commonly known as clothing, and so understood, not only by woolmen but, as expressed by one of the witnesses, by
99½ per cent of all the people of the United States. The
392 man on the street is as competent to give significance and understanding to the term "commonly known as clothing wool" as the wool merchants of Boston, Chicago, or any other point in our country.

Whether a wool is "commercially" known as clothing wool is a matter of proof. Judicial notice can not be taken of it. Judicial

notice can be taken of the expression "commonly" known as clothing wool.

In Seeberger *v.* Schlesinger (152 U. S. 581, 585) the court held:

The commercial designation of an article, however, is not a matter of which courts can take judicial notice, but is a fact to be proved like any other—by evidence. In this case there is no finding as to the commercial meaning of the word "furs," and no testimony whatever upon the subject, for clearly neither the opinion in the Astor case nor the extract from the encyclopedia can be considered a legitimate testimony.

In United States *v.* Goldberg's Sons (3 Ct. Cust. Appls. 282; T. D. 32573) the Court of Customs Appeals gave expression to the meaning of "commonly or commercially" with reference to jewelry, and stated:

"If there is any distinction between that which is jewelry in fact, by description of the processes of making the same, or the scientific, or any special understanding, the denominative designation 'commonly * * * known as jewelry' is not necessarily coextensive therewith. What may, in fact, be jewelry descriptively or scientifically and what the public may understand to be jewelry may, and ofttimes probably are, different.

"The two tariff designations 'commonly' and 'commercially' are manifestly aimed to include, first, that which is commercially known as jewelry; that is to say, that which the wholesale jewelry trade of this country generally and uniformly throughout the country in the wholesale trade thereof regards and classifies as jewelry; and secondly, that which is commonly known as jewelry; that is to say, that which the general public in its everyday understanding and converse regards and classifies as jewelry. The provision extends the scope of the paragraph to everything which the commercial and popular understanding denominates and classifies as jewelry."

In the Goldberg case the board had held that certain neck chains were not jewelry, the provision in the statute being for "all articles commonly or commercially known as jewelry." The court reversed the action of the board, holding that the merchandise was properly dutiable as parts of articles commonly known as jewelry, as assessed by the collector. In arriving at that conclusion it took judicial notice of the fact that the merchandise was commonly known as jewelry, being within the common understanding of the meaning of that term. How pertinent is that holding to the question at bar!

In addition to the above construction, there is an additional one that is necessarily included in construing the statute in ques-
383 tion. The rule is, that as between two taxing statutes in which a doubt is expressed as to which one applies to the merchandise, the law must be construed against the Government and in favor of the citizen. This rule is not applicable where the question of exemption is pleaded and the Government is insisting on a tax. In such instance the construction must be favorable to the Government or taxing power if the language will permit.

In United States v. Dickson (15 Pet. 141), with reference to the construction of a revenue statute, the court used this language:

"* * * We are led to the general rule of law which has always prevailed, and becomes consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any such exception must establish it as being within the words as well as within the reason thereof."

This rule is sustained by abundant authority not only in the Supreme Court of the United States but in every court in which it has been applied. See Ohio Life & Trust Co. v. Debolt (16 How. 435); Dubuque & Pacific R. R. v. Litchfield (23 How. 88, 89).

United States v. William Davies Co. (11 Ct. Cust. Appls. —; T. D. 39317), recently decided by the Court of Customs Appeals, and referred to by counsel in their brief, has reference to wool on the skin. The board had held that wool on the skin did not fall within the provisions of paragraph 18 of the emergency tariff act of 1921, but did fall within paragraph 650 of the act of 1913. Clearly that holding was correct.

The emergency tariff act did not attempt to tax wool on the skin, and the wool referred to in paragraph 18 is a different commodity from the wool on the skin referred to in paragraph 650 of the free list of the act of 1913. The court said:

"Congress having dealt with wool and wool on the skin as different commercial articles, it must be assumed that it did so in conformity with the established and subsisting usages of the trade, and that the distinction between wool and wool on the skin continues nothing to the contrary appearing. Wool on the skin can not, therefore, be classified as wool."

Reason, as well as authority, would dictate such conclusion.

It therefore follows that Congress intended to tax wool of all grades. It did so with intent to place it on the taxing list, as shown by the history of the wool statutes, as fairly and legitimately as it could, in language that the ordinary man on the street, in the workshop, behind the counter, or the man who classes wool, could understand.

This record satisfactorily establishes that wool under consideration is commonly known as clothing wool. Bearing on the
394 question of "commonly known" we are permitted to consider the use to which it is applied.

I concur in the conclusion of General Appraiser Brown, but not in his reasoning.

It therefore follows the protests should be overruled.

JERRY B. SULLIVAN,
General Appraiser.

Dissenting opinion

McCLELLAND, *General Appraiser:*

I find myself at variance with my associates in this very important case. I can neither subscribe to their conclusion nor their lines of reasoning as indicated by their respective opinions.

The collector in each instance followed the advisory classification of the appraiser and the issues may therefore be set forth by quoting the special reports of that officer on each of the protests with the claim or claims evidently relied upon by protestants, as follows:

"Protests 942570 and 942569: The merchandise subject of protest consists of certain wool entered at 15 cents per pound, but returned at 30 cents per pound under paragraph 18 of the emergency tariff act, as in the opinion of this office the wool has been increased in value by rejection of part of the original fleece, thereby carrying the double duty provided in said paragraph."

Although there are a number of alternative claims made, it is apparent that the one relied upon is for free entry under paragraph 650 of the tariff act of 1913.

"Protest 941808: The merchandise subject of protest consists of high-grade woolen yarn, returned for duty at the rate of 18 per cent ad valorem under paragraph 287 of the tariff act of 1913, plus 45 cents per pound under the emergency tariff, paragraph 19. Protest is made that the duty under the emergency tariff does not apply. This appears to be a question of law. The manufacturers do not designate wool as clothing wool, therefore the claim is made that this yarn is not known as being composed of clothing wool."

The claim is that the merchandise covered by this protest, being yarn made of wool, should have been assessed at only 18 per cent under paragraph 287 of the act of 1913, which reads: "Yarns made wholly or in chief value of wool, 18 per centum ad valorem."

"Protest 952179: The merchandise subject of protest consists of Australian greasy wool, entered and returned for duty at the rate of 30 cents per pound under paragraph 18 of the emergency tariff, being, in the opinion of this office, wool of a class therein provided for, and inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

The claim in this protest is the same as that made in 942570 and 942569.

"Protest 950402: The merchandise subject of protest consists of wool cloth, entered and returned for duty at the rate of 35 per cent ad valorem under paragraph 288 of the tariff act of 1913, plus 45 cents per pound under paragraph 19 of the emergency tariff, which latter assessment is objected to by the protestants. In the opinion of this office the merchandise is manufactured from wool of a kind provided for in paragraph 18 of the emergency tariff and is therefore dutiable as reported."

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The claim in this protest is that the wool cloth involved is subject to duty at only 35 per cent under either paragraph 290 or 291 of the act of 1913, and not at that rate plus 45 per cent under paragraphs 18 and 19 of the emergency tariff act of 1921.

"Protest 951310: The merchandise subject or protest consists of Australian greasy wool, entered at 15 cents per pound, but returned at 45 cents per pound under paragraph 18 of the emergency tariff, being, in our opinion, wool of a class therein provided for, and, inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

The claim in this protest is the same as that in 942570 and 942569.

"Protest 953320: The merchandise subject of protest consists of South American greasy wool, entered and returned for duty at the rate of 30 cents per pound under paragraph 18 of the emergency tariff, being, in our opinion, wool of a class therein provided for, and, inasmuch as the same has been increased in value by the rejection of part of the original fleece, carrying the double duty specified."

The claim in this protest is also the same as in protests 942570 and 942569.

Summed up, the issues are whether the wools in question are what are "commonly known as clothing wool" within the meaning of paragraph 18 of the emergency tariff act, and whether the yarns and cloth involved are also made from wool so known. The outcome hinges upon the construction to be placed upon the words "commonly known" in the connection used in paragraph 18, supra.

Clearly the question of commercial designation as distinguished from the common or ordinary meaning of the words used in this paragraph is not involved here. It is apparent, I think, that on the trial there was no effort on the part of either importers or the Government to establish commercial designation. Surely if there was any such purpose it failed for the reason that there was wide difference of opinion among the witnesses on the salient points upon which the authorities require that such a designation must rest. Commercial designation must be uniform, definite, and general, and is always a fact to be proved. Maddock v. Magone (152 U. S. 368). In the absence of such proof it is to be presumed that the commercial and common meaning are the same. Swan v. Arthur (103 U. S. 597); Schneider v. Barney (113 U. S. 645); Acker v. United States (1 Ct. Cust. Appls. 328; T. D. 31431); United States v. Walter (4 Ct. Cust. Appls. 95; T. D. 33371).

396 It is true that all of the witnesses were men experienced in handling wool, either as the result of trading in it or manufacturing it into yarns or other commodities, and it was my privilege to personally hear all of the testimony taken on the trial, with the consequent advantage of observing the witnesses. In nearly 20 years of experience in presiding at trials in revenue cases I recall few where the issues were more earnestly contested and the dividing line between importing and domestic interests so openly manifested. As a group the witnesses were high-class, intelligent men, but nevertheless

human, and I have been unable to escape the conclusion that, consciously or unconsciously, at least a majority of them were influenced in giving their testimony more or less by interest. This was particularly true of the witness Fawcett, who was shown to be the paid employee of the Farm Bureau Federation and assistant manager of the National Wool Warehouse Storage Co. The weight to be given to his testimony was, in my opinion, impaired by the fact that he sought to repudiate certain articles on wool published under his name in a magazine or periodical called the American Sheep Breeder and Wool Grower.

It is a significant fact that my associates, while arriving at the same conclusion, have reasoned along altogether different lines. Judge Brown ignores absolutely the testimony of the witnesses for the reason that they are "commercial witnesses," and likewise discards the definitions of the various grades or classes of wool by lexicographers upon the theory that such definitions make the same distinction between "combing wool" and "clothing wool" as is made by the witnesses, while at the same time admitting that both "combing wool" and "clothing wool" are largely grown in the United States. He concedes that if the question at issue turned upon commercial custom the testimony in the case would exclude the wool before us from the provision in paragraph 18, supra, for wool "commonly known as clothing wool." Having discarded the testimony of the witnesses and the definitions of the lexicographers, he concludes that the intent of Congress must be derived "from the context, from the title of the act, from the general provision and purposes of the whole act, and from the circumstances surrounding its passage so far as they show light thereon."

I think it perfectly reasonable to assume that the man in the street, the laborer, the mechanic, and the ordinary tradesman, who have had no experience either in raising wool, dealing in it, or manufacturing it into commodities which take it out of the natural state, know nothing of wool beyond the meaning to be inferred from its generic name. It is not to be presumed that they know the difference between the various kinds of wool grown on the different breeds of sheep, or the grades or classes of wool into which the fleeces shorn from the
397 sheep are divided. Where and from what sources are we to derive knowledge of what is commercially known as one kind or class of wool from another if we can not accept the judgment of men whose experience qualifies them to distinguish between the various kinds and classes of wool which grow upon the different breeds of foreign and domestic sheep and the classes into which fleeces of wool are divided after being shorn from the animals?

It is well settled that courts may take evidence of the common meaning of words and terms (Robertson v. Salomon, 130 U. S. 414, 415; American Bead Co. case and cases therein cited, G. A. 8241; T. D. 37954; 36 Treas. Dec. 951) and therefore, inasmuch as the testimony of the witnesses did not prove a commercial meaning for the words "commonly known as clothing wool" as distinguished

from the ordinary meaning, what they did say should be considered as indicating the common understanding of those words among the class of people who from experience know their meaning.

Judge Sullivan bases his conclusion largely upon such of the testimony as shows the ultimate use of the wools in issue, but I do not think that the question of use is to be considered. As I view the issue before us it is one of whether the wools are commonly known as clothing wools, rather than the use of uses to which they are actually put after being spun into yarns.

If Congress had intended to provide in paragraph 18, supra, for wool the ultimate chief use of which is in the manufacture of clothing, it would have been very easy to have expressed such intent in simple unambiguous language, and this it very clearly did not do. It is not to be gainsaid that for at least 50 years there has been a well-defined distinction between clothing wools, combing wools, and carpet wools. In the tariff act of 1883 Congress divided wools into these three classes, making clothing wools class 1, combing wools class 2, and carpet wools class 3. As pointed out by Judge Sullivan, in the tariff revision of 1894, all wools were placed on the free list, and, of course, in so doing these distinctions were eliminated.

In the tariff act of 1897, next succeeding, wools were restored to the dutiable list, and while in so doing the eo nomine distinctions of clothing, combing, and carpet wools were not used, it is still to be noted that there was substantially the same distinction as to blood between the clothing wools and combing wools. In fact, there is absolutely no difference between the paragraphs in the two acts covering combing wools except that the caption to paragraph 354 in the act of 1883 read "Class two, combing wools," while
398 in 1897 it read simply "Class two." Specifying clothing wools in the act of 1883 (par. 353) the Congress named:

"Merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Aires, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes 2 and 3."

The caption of paragraph 349 of the act of 1897 differs also in that "clothing wools" is eliminated therefrom, but the body of the paragraph is the same as paragraph 353, supra, except that after the word "including," in line 4, the words "Bagdad wool, China lambs' wool, Castle Bronco, Adrianople skin wool or butchers' wool and" were inserted, while the words "also including" were omitted.

In the revision of 1909 paragraphs 349 and 350 of the act of 1897 were reenacted without change. I do not consider that the eliminating of the terms "clothing wools" and "combing wools" as aforesaid is at all significant, inasmuch as there is the same division of the wools, especially since these terms were still to be found in the bodies of the revised paragraphs.

Of course, the testimony of the witnesses called by the protestants supports the contentions of the importers, but I deem the testimony of the witnesses called by the Government more convincing for the self-evident reason that they can not be charged with the purpose of supporting the claims of the importers. I therefore feel constrained to quote therefrom some significant passages as follows:

Witness Wilcock (p. 264):

"Q. So that we find throughout the United States, and all quotations, trade journals, Government publications, that same distinction of clothing and combing, do you not?

"A. As long as I have remembered.

"Q. Now, this distinction between clothing and combing is based largely upon the general comon use to which the wools go; is that not true?

"A. Yes.

* * * * * * *

"General Appraiser McCLELLAND. Among the manufacturers of wool and dealers in wool, with whom you have come in contact and done business, either buying or selling, is the term 'clothing wool' a term that is usually used among them?

"The WITNESS. It is used amongst the trade in Boston, Chicago, St. Louis, Philadelphia, and the wool centers; all clothing wool among the trade commercially is short wool that is not suitable for combing purposes.

"General Appraiser McCLELLAND. That is the common understanding of the term as you know it?

"Q. None of these Exhibits 1 to 12 would be a clothing wool in that sense?

"A. No, sir; they are all combing wools.

"Q. As distinguished from the clothing wools?

"A. In a commercial point of view.

399 "General Appraiser McCLELLAND. Well, you have no other understanding of wools, of the different classes of wools, except what you have learned in the wool trade?

"The WITNESS. None whatever" (pp. 266–267).

Witness Meadows (pp. 281–288):

"Q. What are the uses of the wool which you handle?

"A. We sell wools that are known as combing wools to mills that make worsteds, and wools known as clothing wools to mills that make woolens, generally speaking.

* * * * * * *

"Q. Will you please examine Exhibits 1 to 13, inclusive? Are you familiar with the wools of the character represented by Exhibits 1 to 13? [Witness having examined samples.]

"A. Yes, sir.

"Q. Have you dealt in them?

"A. Yes, sir.

"Q. How would you describe them?

"A. They are of varying quality, but they are all combing wools with the exception of possibly the last one, which could be used for combing or clothing.

* * * * * * *

"Q. What is the other sample that you produce?

"A. That is a clothing wool.

"Q. And is that a type which you commonly handle?

"A. Yes, sir.

"General Appraiser McCLELLAND. What is the recognized difference between the two?

"The WITNESS. Its relative length.

"General Appraiser McCLELLAND. Combing is the longer?

"The WITNESS. Yes, sir.

* * * * * * *

"Q. If you received an order for 25 bales of clothing wool, would a delivery of any one of the wools represented by Exhibits 1 to 12 be a good delivery under term?

"A. No, sir (p. 292).

* * * * * * *

"Q. In the absence of any explanation, if you are talking about clothing wools, would you include combing wools like these?

"A. No, sir (p. 294)."

Witness Patterson (pp. 310–315):

"Q. Is there a term that you are familiar with used in the woolen trade of 'clothing wool'?

"A. Yes, sir.

"Q. Well, what do you understand, as an experienced woolman, that that term includes?

"A. The term 'clothing wool' includes wools that are of shorter staple than wools that we term 'combing wools.' They may be either very short or they may be only just short, not very short, because they are frequently used interchangeably, either for clothing or combing purposes.

"Q. Based upon your experience, which runs through a long period of years, would combing wools ever be included within the term 'clothing wools'?

"A. The best way I can answer that—will you allow me to answer that in my own way? We sometimes put up piles of wool for combing wools, and then when clothing wools were scarce we would take a part of that combing wool and sell it for clothing wool.

"Q. I ask you, in your wool parlance, when you use the term 'clothing wool'—never mind the stringency of the time—would it include combing wool?

"A. I think not; not in the trade parlance.

400 "Q. Do you know any other parlance about wool? Do you think that the man on the street knows anything about it?

"A. I don't know about the man in the street (p. 310).

* * * * * * *

"Q. Mr. Patterson, will you examine Exhibits 1 to 13, inclusive, and state whether they have the characteristics of the wool which you handle?

"A. I should say most of them have (p. 312).

* * * * * * *

"Q. Give each sample a sufficient examination to enable you to say under what class it falls, combing or carding.

"A. I think I find two samples here that come under the classification of clothing wool of which I think they probably could both be used for combing. The others are all combing wools, in my mind (p. 313).

* * * * * * *

"Q. Now, then, if an order came for clothing wool, would any of the samples here, from 1 to 13, and excluding 5 to 13, be a good delivery? Could you fill the order properly with those?

"A. I hardly think I could (p. 315)."

Witness Pratt:

* * * * * * *

"Q. Aren't those that you found to be combing wools included within the term 'clothing wool' as you understand it in your trade?

"A. We would not call those clothing wools in our trade, except those two here [indicating Exhibits 5 and 13].

"Q. The question contemplated his saying whether they were clothing wool. Are these either carpet or clothing wools—these samples that you have examined?

"A. They are not carpet wools: they are combing wools, except these two might be used for either combing or clothing.

"Q. Would you say that except those two, that either of the samples there could be classed as either carpet or clothing wools?

"A. No: carpet wool.

"Q. That is only half an answer. Could they be classed, then, as clothing wools?

"A. Only two samples: the rest are combing (pp. 334–335)."

* * * * * * *

Witness Bradford:

"Well, you have had occasion recently, in the past few years—confining yourself to the past five years, say—have had occasion to read the various quotations in the market and papers?

"A. Yes.

"Q. And trade journals?

"A. Yes.

"Q. Government publications?

"A. Yes.

"Q. Now, don't they constantly use, even to-day, the terms 'clothing' and 'combing'?

"A. They do.

* * * * * * *

"Q. And as those terms are used and as they have been used constantly throughout your experience, have not clothing wools meant the shorter fibered wools in each quality of fineness?

"A. Surely.

"Q. And the combing wools the longer fibered wools in each quality?

"A. Yes (p. 363).

* * * * * * *

"General Appraiser McCLELLAND. Would any of these others be commonly called clothing wools?

"The WITNESS. No, sir; I don't think they would be.

"Q. That is, Exhibits 1 to 12?

"A. Nos. 1 to 12 or 13 there (p. 366)."

* * * * * * *

401 Witness Ryder:

"Q. Now, in your experience in the trade, dealing with your fellow members in the trade, throughout your experience these exhibits here that you have described as combing wools, they would never be known among those people as clothing wools, would they?

"A. The farther sample over there [indicating].

"General Appraiser McCLELLAND. No. 13.

"A. It would be very difficult to call that a combing wool.

"Q. That is Exhibit 13. But leaving out Exhibit 13, these other exhibits, 1 to 12, they would not be regarded in any trade that you have come in contact with as clothing wool?

"A. Not in the strict term of clothing wool.

"General Appraiser McCLELLAND. As the term is commonly understood among people that know anything about what they are, would they not be included in the term 'clothing wool'?

"The WITNESS. No (p. 387)."

* * * * * * *

Witness Seaver:

"Q. What are the common characteristics of clothing wools that distinguish them from carpet wools?

"Mr. SHARRETTS. That is objected to. He has not stated anything about distinguishing.

"General Appraiser McCLELLAND. If he knows the commodity clothing wool, now let him state what that is.

"Q. State the common characteristics of clothing wool.

"A. Clothing wools are all wools excepting what are known as carpet wools.

"Q. Yes; but what are the characteristics of wools which enable you to determine whether they are the clothing or carpet class?

"A. Blood.

"Q. What do you mean by that?

"A. The degree of fineness or coarseness in the fiber (p. 406)."

* * * * * * *

"Q. Are such wools as Exhibits 1 to 13, inclusive, included or excluded from the class known as clothing wool?

"A. They are included in the class known as clothing wool.

"Q. How long has that been true, according to your knowledge?

"A. Forty-nine years (p. 428)."

* * * * * * *

"Q. Mr. Seaver, throughout your experience you have seen the terms 'clothing' and 'combing' used constantly, have you not?

"A. I have seen the terms 'combing' and 'clothing' used.

"Q. And they have had a very general use, have they not?

"A. They have a general use; yes.

"Q. And whether right or wrong, the meaning that has been given to these has been, the clothing wool as referring to the short-staple wool, to the woolen industry, and the combing wool, the longer staple wools, to the worsted industry?

"A. I don't agree with it.

"Q. You don't agree with it, but that has been the general use, is that not true?

"A. That has been the general use; yes.

"Q. Now have you examined these exhibits, Mr. Seaver, 1 to 13?

"A. I have.

"Q. Those are all combing wools, are they not?

"A. 1 to 12.

"Q. Are combing wools?

"A. Are adapted to the process of combing.

402 "General Appraiser McCLELLAND:

"Q. Are they combing wools?

"A. There are some of those wools that can be interchangeable in the use, in the combing mill, according to the supply and demand.

"Q. It is not a question of what can be done with them; it is a question of whether, as you understand the terms, they are combing wools?

"A. They are adapted to combing.

"Q. Are they or are they not combing wools?

"A. The trade generally would call those, from 1 to 12, combing wools (pp. 429–440)."

* * * * * * *

It is noteworthy that this witness goes farther than any other witness was willing to go in the effort to class combing wool and clothing wool all under the last-named designation.

Witness Drake:

"Q. Are there anywhere in the Exhibits 1 to 13 which you have examined, any wool which, among woolmen, is not known as combing wool?

"A. There are none (p. 471)."

* * * * * * *

"Q. With the exception of Exhibit 13, all the remaining 12 are commonly, among woolmen, designated as combing wools?

"A. Among woolmen they are combing wools.

"Q. And among woolmen they are not commonly designated as clothing wools?

"A. Among woolmen they are all clothing wools.

"Q. Are they so designated?

"A. Technically, no; they are all clothing wools (p. 476)."

* * * * * * *

On the trial the bias of several of these witnesses was strikingly apparent. In fact I think this must be manifest upon even a casual reading of the testimony, particularly from the repeated efforts to establish a "broader meaning" for the term "clothing wool" than its general use warranted.

As I have already pointed out, a commercial meaning for the words "wool commonly known as clothing wool" has not been established and therefore they must be given their common or ordinary meaning. It is well settled that courts may resort to dictionaries for help in arriving at such common or ordinary meaning of words, and that in the absence of proof of commercial meaning which is different, such dictionary meaning must prevail.—Milne v. United States (115 Fed., 412); Rotograph Co. v. United States (1 Ct. Cust. Appls. 83; T. D. 31106); United States v. Holland-American Trading Co. (4 Ct. Cust. Appls. 337; T. D. 33527); United States v. Sears Roebuck & Co. (7 Ct. Cust. Appls. 60; T. D. 36388).

The following quotations from dictionaries and encyclopedias are illuminating:

"Webster's New International Dictionary: Clothing wool. A fine, close, short-stapled wool. Combing wool: A wool adapted for being combed.

403 "Standard Dictionary: As shorn from the sheep wool is divided commercially into short clothing or carding wool (3 to 4 inches long) and long or combing wool (4 to 6 inches long).

"Appleton's New Practical Encyclopedia, volume 6, page 431: Clipped wools are divided into long and short stapled or combing and clothing wool.

"Knight's Cyclopedia of Industry, under the title 'Woolen and worsted manufactures,' page 1795: Wools are divided into two great classes, clothing wools and combing wools, and the fabrics woven from them are termed woolens and worsteds.

"Encyclopedia Americana, volume 29, published 1920, page 50, under the title 'Wool.' Both the staple or combing and clothing of a given grade are the same fineness, but the combing wools are generally used for the manufacture of worsteds, while the clothing is used in the manufacture of woolens.

"New International Encyclopedia, volume 23, page 793: The clothing wool used in the United States, aside from home production is derived from Australia, South America, and South Africa. The imported combing wool comes mainly from Great Britain.

"Nelson's Perpetual Loose-leaf Encyclopedia, volume 12, published 1921: Wool is classed under three general heads: First, the carding or clothing wools; second, the combing or worsted wools; and third, miscellaneous or carpet and blanket wools. This classification is based on both the length, fineness, and felting qualities of the staple."

The definitions of wools as thus given by lexicographers are in strict harmony with the names given and the divisions made by most of the witnesses, even those called by the Government, while some of them undoubtedly exhibited anxiety to support a broader meaning which would class all wool that ultimately found its way into the manufacture of clothing as clothing wool.

I do not deem it necessary to discuss the question of congressional intent as manifested by the passage of the emergency tariff act as evidenced particularly in paragraphs 18 and 19 beyond saying that such intent is only to be gathered from the language used. It is not even a question of what classes of wools the framer of these paragraphs thought he was including therein, or even what the committee reporting the bill thought was covered thereby. It can not be assumed that the Members of the House of Representatives and the Senators who voted in favor of the passage of the bill held the same opinions as to the meaning of the language used as did the framer of paragraphs 18 and 19 or the committee that reported them, nor is it to be assumed that the President in approving the bill as a whole so understood the language used. The intent is to be gathered from the language used.

In United States v. William Davies Co. (11 Ct. Cust. Appls. 392; T. D. 39317), in holding that wool and wool on the skin were different commodities, the court said:

"It may be said with confidence, therefore, that all of the tariff acts for nearly a century dealt with wool and wool on the skin as different commodities, and that while some of the acts imposed
404 on wool on the skin the same duty as that imposed on wools of like character, others imposed a different duty. Whether the duty was the same or different, however, all of the acts recognized wool and wool on the skin as different commercial articles and as distinct separate tariff entities.

"Congress is presumed to know the nomenclature and language of commerce. Tariff laws apply especially to men engaged in commerce and are drafted in the words and terms and vocabulary which are in use and understood by the trade. Tariff designations must be held, therefore, to have the sense and meaning assigned to them by trade and commerce, and a distinction once made by Congress as to tariff commodities will be presumed to continue in the absence of anything showing a contrary legislative intention.—Dickerhoff et al. v. Robertson (44 Fed. 160); United States v. Beierle (1 Ct. Cust. Appls. 457; T. D. 31506); Bloomingdale v. United States (3 Ct. Cust. Appls. 204, 206; T. D. 32530); De Jonghe et al. v. United States (5 Ct. Cust. Appls. 134, at p. 136; T. D. 34189); Reiche v. Smythe (13

Wall. 162, 163); Arthur v. Morrison (96 U. S. 108, 110, 111); Arthur v. Lahey (96 U. S. 112–115); Worthington v. Abbott (124 U. S. 434–436); Robertson v. Rosenthal (132 U. S. 460, 464).

"Congress having dealt with wool and wool on the skin as different commercial articles, it must be assumed that it did so in conformity with the established and subsisting usages of the trade, and that the distinction between wool and wool on the skin continues, nothing to the contrary appearing. Wool on the skin can not therefore be classified as wool."

The function of a judicial tribunal is simply to construe the language found in the statute. It may neither add to nor take from it words that will give it a meaning other than the words used will justify. Such would amount to usurping legislative functions. No rule of construction is better settled than that as to doubtful questions of law the importer shall be given the benefit of the doubt. In Goat & Sheepskin Import Co. et al. v. United States (5 Ct. Cust. Appls. 178; T. D. 34254) Judge De Vries, writing for the court, said:

"With all applicable canons of construction conducing to the conclusion stated, in the presence of an obviously doubtful question of law, this court is bound to construe the statute that the importers, appellants here, shall be accorded the benefit of the doubt.—Woolworth v. United States (1 Ct. Cust. Appls. 120–122; T. D. 31113); United States v. Hatters' Fur Exchange (1 Ct. Cust. Appls. 198–202; T. D. 31237); United States v. Matagrin (1 Ct. Cust. Appls. 309–312; T. D. 31406); United States v. Harper (2 Ct. Cust. Appls. 101–105; T. D. 31655); American Express Co. v. United States (3 Ct. Cust. Appls. 475–479; T. D. 33121); United States v. American Bead Co. (3 Ct. Cust. Appls. 509–515; T. D. 33166); Newhall et al. v. United States (4 Ct. Cust. Appls. 134; T. D. 33410)."

Here I do not think that the pertinent language of paragraph 18 is of doubtful meaning, but if there be a doubt it should be resolved in favor of the importers.

I am decidedly of the opinion that the language in paragraph 18 "wool, commonly known as clothing wool" does not include combing wool, and therefore the wools in question are not subject to any of the rates of duty specified in paragraph 19. The same is
405 true of the yarns and cloth covered by the protests inasmuch as they are made from combing wool.

The protests should be sustained and the decision of the collector reversed in each case.

CHAS. P. MCCLELLAND,
General Appraiser.

PROTEST SCHEDULE

Protest	Importer
942570/11264	Stone & Downer Co.
941808/11227	Do.
942569/11260	Do.
952179/11661	John R. Conkey.
951310/11598	J. A. Karnheim.
953320/11742	Lowe, Donald & Co.
950402/11553	

Judgment order

At a term of Board 1 of United States General Appraisers held in the city of New York on the 20th day of February, 1923

Present: General Appraisers McClelland, Sullivan, Brown.

Protests Nos. 942570, &c.

STONE & DOWNER CO. ET AL.

v.

THE UNITED STATES

The above-entitled cause having regularly come on to be heard, and the board, in its decision dated the 20th day of February, 1923, having determined the law and facts in favor of the Government;

It is hereby ordered, adjudged, and decreed this 20th day of February, 1923, that the protests in this case be and the same are hereby overruled.

JERRY B. SULLIVAN,
Acting Chairman Board 1.

[SEAL] By D. P. DUTCHER,
Chief Clerk.

[Indorsed:] United States Court of Customs Appeals. Filed Apr. 21, 1923. Arthur B. Shelton, clerk.

406 Before United States General Appraisers, New York, September 10, 1924

Decision of the board

Protests 945882, etc., against the assessment of duty by the collector of customs at the port of Boston

Before Board 1

BROWN, General Appraiser: Upon the prior appeal of this identical issue the court of appeals, in T. D. 40019, the record of which is incorporated herein, held that the words "commonly known as" meant nothing, reversing the holding below, G. A. 8613 (43 Treas. Dec. 141), which had held they were used for the purpose of excluding trade meaning, which ordinarily controls customs classification. The court says (p. 35 of the advance sheet of decision of November 17, 1923):

"We can, therefore, see no additional meaning given to the words 'clothing wool' by the use of the words 'commonly known as,' and in arriving at the conclusion we have considered the fact that it has

not been shown in this case that there is any difference or any distinction between what is 'commercially' known and what is 'commonly' known. Indeed we can see no difference in the meaning or application of the phrases 'commonly known' and 'usually known.'"

Starting with that assumption, of course, the words "usually known" (and now under said ruling the words "commonly known," treated as identical) would be subject to interpretation by the custom of merchants in handling wool in trade. In other words, the commercial nomenclature would govern whether there was a different common meaning or not. And as it was held in the first finding below in G. A. 8613 (43 Treas. Dec. 142) the trade definition of the wool in question as combing wool (as distinguished from clothing wool) was fully made out, that would necessitate sustaining the protests in obedience to our appellate court's rulings in T. D. 40019.

In cases where commercial meaning is not excluded by the form of the language used, commercial meaning always governs. In such cases where no evidence of commercial meaning is introduced, then the common meaning (the expressed intent of the legislature gathered from the words themselves, their context, etc., sometimes aided by testimony of such common meaning) is presumed to be the same as the commercial meaning if that had been proved;
407 such common meaning is determined by the court as matter of law and governs the classification in such absence of commercial testimony.

It has never been held heretofore, and we do not understand the court of appeals now to hold, that words susceptible of commercial meaning (which has been conclusively proved in the case) can be construed according to a common meaning shown to be different from such clearly proved commercial meaning.

There is also no rule of customs law, and we do not understand the court to hold, that the presumption that "commercial meaning" is the same as "common meaning" applies to any cases other than those where in the absence of testimony of commercial designation (where it was admissible) such *presumption* makes the common meaning found by the court control the classification.

In other words, the rule does not permit the introduction of testimony of commercial meaning where the language of the statute expressly excludes it (as we supposed it did here) in order, under the supposition that the commercial meaning and the common meaning were the same, to thus indirectly derive the common meaning from purely trade testimony. That would be the exact reverse of the rule and seemingly lead to hopeless confusion in the rules of classification, and we do not consider the opinion on appeal to produce such result.

Any particular words are either subject to interpretation by their use among merchants in trade (what we call commercial designation) or else (because they are plainly words of description solely, or because they show in themselves a plain intent to exclude such

commercial meaning) are not subject to interpretation by commercial proof as to their use among merchants. In the latter event the court must find their common meaning; that is, the intent and purpose (irrespective of trade nomenclature) for which they were used by the legislature.

There is no rule of law, however, in customs or elsewhere, to the effect that the question whether or not particular words by their form of expression exclude commercial meaning can be determined by the consideration of testimony taken, whether such testimony relates to commercial meaning or to common meaning. That is a question of construction, which no such testimony can affect one way or the other, and which the court must determine from the language itself.

If the court therefore determines in the first place that the language used was intended to exclude commercial designation, such commercial testimony becomes inadmissible. If on the other hand the court in the first place determines that the language used does not exclude commercial designation, then the testimony to
408 show trade use of the terms is admissible and necessarily controls over any proof of common meaning.

It is the latter conclusion, as we understand it, that the court of appeals arrived at in this case, and therefore any testimony of common meaning as introduced by the Government, however complete and strong in the new record now before us, can have no effect as against the clear proof of commercial designation fully made out by the importers. And this being so, following our interpretation of the court's conclusion, the protest must be sustained.

GEORGE STEWART BROWN,
General Appraiser.

Concurring opinions

SULLIVAN, General Appraiser: In the foregoing cause considerable testimony was introduced in addition to that contained in the original case, Stone & Downer Co. et al. v. United States, G. A. 8613 (T. D. 39473, 43 Treas. Dec. 141).

The additional testimony, in my judgment, does not change the facts. It becomes a matter of the weight of testimony and the construction to be placed on the term "commonly known as clothing wool" as provided for in section 18 of the emergency tariff act of May 27, 1921.

I think there is not any question that all this testimony is competent either upon the common meaning of the term or with reference to commercial designation. Commercial designation is entirely a question of fact. It does not become a matter of law. This is held in Tyng v. Grinnell (92 U. S. 467, 470), wherein the Supreme Court

of the United States in clear and unequivocal language declared that—

Such laws * * * are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of the description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used."

It therefore was entirely competent to introduce testimony of commercial designation. Unquestionably the common meaning of the term falls within the common understanding, and thereby a court can take judicial notice as to its meaning; yet in Robertson v. Salomon (130 U. S. 412) the Supreme Court of the United States stated:

"The common designation as used in everyday life * * * would have been very proper to be shown in the absence of further light from commercial usage. We think that the evidence on this point ought to have been admitted."

409 I refer to this fact for the reason that Judge Brown indicates that the testimony may in one instance be incompetent and in another competent. I think that customs law has sanctioned the practice of introducing testimony not only with reference to commercial designation but as to the common meaning of the term used. This is not only sustained by the Supreme Court of the United States but by numerous authorities that may be cited in the Court of Customs Appeals.

In Austin Nichols v. United States (4 Ct. Cust. Appls. 313; T. D. 33519) it was held that it was competent to prove what are vegetables by trade testimony and, in the absence of such, to prove the common understanding of that term; and it was error to exclude testimony offered for that purpose.

My reading of this testimony does not lead me to differ from the conclusion arrived at in the original cause heretofore cited (Stone & Downer Co. et al. v. United States, G. A. 8613, supra), yet, the Court of Customs Appeals having held that this testimony sustains the contention of the importer, following such decision of the court I feel constrained to acquiesce in the conclusion of Judge Brown that the protests should be sustained.

JERRY B. SULLIVAN,
General Appraiser.

MCCLELLAND, General Appraiser: Adhering to the views expressed in my dissenting opinion in G. A. 8613 (43 Treas. Dec. 141), I concur in the conclusion of my associates that the protests should be sustained.

CHAS. P. MCCLELLAND,
General Appraiser.

Judgment order

[Title omitted.]

The above-entitled cause having regularly come on to be heard, and the board, in its decision dated the 9th day of September, 1924, having determined the law and facts:

410 It is hereby ordered, adjudged, and decreed this 9th day of September, 1924, that the protests in this case, claiming certain combing wool in protests 945882, 945938 and 956790 to be free of duty under paragraph 650, act of 1913, and certain yarn in protest 950777 to be dutiable at only 18 per cent ad valorem under paragraph 287, act of 1913, and certain wool cloth in protest 949137 to be dutiable at only 35 per cent under paragraph 290 of said act, are sustained, and the collector of customs at the port of Boston will reliquidate the entries accordingly.

C. P. McClelland,
Chairman, Board 1.

[SEAL.] By D. P. Dutcher, *Chief Clerk.*

Indorsed: Filed Oct. 29, 1924. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

411 To United States Court of Customs Appeals

No. 2463

The United States, appellant
v.
Stone & Downer Co., and Lowe, Donald & Co., appellees

Certificate of importance

Filed Dec. 23, 1924

To the Honorable the Judge of said Court:

In accordance with the provisions of the act of Congress establishing the Court of Customs Appeals, I hereby certify that in my opinion the case above stated is of such importance as to render expedient its review by the Supreme Court of the United States in the manner provided by said Act.

This 23rd day of December, 1924.

Harlem Stone,
Attorney General.

[File endorsement omitted.]

412 [Minute entry of argument and submission, January 29, 1925, omitted in printing.

413 In United States Court of Customs Appeals

[Title omitted.]

Opinion

March 23, 1925

BLAND, Judge, delivered the opinion of the court:

The Government appeals from the judgment of the Board of General Appraisers in T. D. 40368 (G. A. 8842), sustaining protests of the importers and reversing the collector of customs in assessing duty under paragraph 18 of the emergency tariff act of May 27, 1921, upon certain wool, woolen cloth, and yarn importations made at the port of Boston.

Paragraph 18 is as follows:

"18. Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools, etc."

At the trial below it was stipulated that the wool covered by protests 945882/11410, 945968/11383, and 956790/11920 is in every essential and material respect the same as Exhibits 1 to 12, inclusive, in suit No. 2245, decided by the United States Court of Customs Appeals in Stone & Downer Co. et al. v. United States (12 Ct. Cust. Appls. —; T. D. 40019), dated November 17, 1923 (45 Treas. Dec. 167), and that the yarn covered by protest 950777/11585 consists of worsted yarn and is in every essential and material respect the same as Exhibit 15 in said suit No. 2245.

It was further stipulated that the cloth covered by protest 949137/11507 consists of worsted cloth made from worsted yarn and is in every essential and material respect the same as Exhibit 14 in said suit No. 2245.

It was also stipulated that the record in said suit No. 2245, including the exhibits, shall be made a part of the record in this case.

Exactly the same questions are here involved as were before the court in the Stone & Downer case, supra. Some new evidence was introduced by both sides with reference to the meaning of "clothing wool." The new evidence throws no new light on the case, except that a reading of it confirms us in the opinion that wherever and whenever clothing wool is spoken of by anyone knowing the meaning of the term it means a short-stapled wool used in the carding process as distinguished from combing wool, which is used in the combing or worsted process.

The Government has argued that under the new evidence, it has proven a common meaning, prevalent among our people, for the words "clothing wool" different from their commercial meaning and insists that Congress, when it used the words "commonly known as clothing wool," had reference to this meaning and not to the mean-

ing given the words when used by those in the trade. If that
414 fact had been established satisfactorily, the collector should have been sustained. We think the testimony in the case and the authorities consulted conclusively show the contrary.

The Government's new witnesses attempted to show experience or knowledge in the production, sale, and manufacture of wools and made an attempt to testify in dual capacities. As producers they very lamely maintained that clothing wool meant any wool that went into the making of clothing; but when they forgot their producers' experience and thought of wool from the trade viewpoint, then clothing wool meant a short-stapled wool used in the carding process. The Government sought to show, from witnesses purporting to be familiar with the question, what one unfamiliar with the question would say and think. As suggested by the trial court, why did not the Government bring in the man from the street who knew nothing about the grades of wool? It is apparent that those who defined clothing wool as "all wool that went into the making of clothing" either knew nothing about or ignored the meaning of the words "clothing wool" when used by anyone familiar with the subject.

In this whole record, which includes the record of the former case, there is no convincing testimony that the words "clothing wool" are ever used by anyone knowing anything about the subject except to describe the short-fibered wool, and it is apparent to us that those who do not know the meaning of the words "clothing wool," rarely, if ever, refer to it as such, and, if they do, it would be to misapply the term. When we read the testimony of additional witnesses and consult additional authorities, it becomes more apparent that the common meaning of the words "clothing wool" is that it is the short-fibered wool.

We are asked to ignore the well settled and consistently followed canons of construction and give to the words used a meaning not sustained by the statute itself and inconsistent with all previous tariff legislative precedents. The Government invokes the broad and liberal rule of construction of the case of the Church of the Holy Trinity v. United States (143 U. S. 457), and asks us to say, contrary to the evidence and contrary to all recognized authorities, that clothing wool should be held to mean wool used for the making of clothing for the reason that there was an emergency for this kind of wool to receive protection in the home markets. This would be contrary to the use given the word in previous tariff acts and contrary to the common, ordinary use of the words.

The illustration of "apples, commonly known as eating apples," was given. It is urged that we all know what "apples" means and that we all know what "eating" means. Therefore, if "eatingapples"
were in the tariff act we would be required to say all apples
415 that were to be eaten would be included within this term. This court happens to know that there is a common meaning for

"eating apples" and that they are distinguished from "cooking apples" and that, if "eating apples" were used in a tariff schedule prefixed by the words "commonly known as" this court would be justified in holding "eating apples" did not mean all apples that were to be eaten; that Congress in using the term "eating apples" had reference to a class of apples which, although to be eaten, were separate and distinct from cooking apples. The fact that some people who eat apples, but who know nothing about the meaning in which the term is used by those familiar with the terms, might define them as any apples that could be eaten, would not obligate this court to accept such meaning, nor could its refusal to accept such meaning be regarded as its acceptance of a commercial term not commonly used.

The Government propounded the inquiry, if there is a common meaning to the words "clothing wool" and if they are unambiguous, why have witnesses testified as to their meaning? We think the answer is so apparent as to hardly need statement. A word in the tariff act may be used in its common sense, be unambiguous and yet be not understood by one having no knowledge of the question. To those having information on the subject it may be free from ambiguity and, to them, it may be used in its common or only sense. We can conceive of a great many things listed in a tariff statute that are used in their common sense which would require explanation and identification in order that the classifier might satisfy himself that they were used in that sense.

The Government contends that the words "commonly known as clothing wool" are ambiguous and that they, therefore, require explanation, and that the history of the legislation and all facts connected with the passage of the act, including debates in Congress, reports, etc., should be and must be resorted to in construing their meaning. In the Stone & Downer case, supra, we held that the words were not ambiguous and that extrinsic facts and the history of the legislation, even if persuasive, could not be permitted to override a plain meaning as expressed by the words used in the act. This subject was thoroughly discussed in the former case and the rule is so plain, so well settled, and so uniformly adhered to by the Supreme Court of the United States, as well as practically almost every known judicial tribunal, that it requires no elaboration here. Bate Refrigerating Co. v. Sulzberger (157 U. S. 1); Pennsylvania R. Co. v. International Coal Min. Co. (230 U. S. 184); Omaha & C. B. Street R. Co. v. Interstate Commerce Commission (230 U. S. 324).

If we were permitted to go into these facts, as counsel have gone into them in the argument, it would be an interesting but dif-
416 ficult problem to know what weight to give to certain of these facts which can be used to support either contention before us. It may be urged that some Congressmen voted for the bill as it appeared with the belief that combing wool had been omitted so as to encourage the worsted industry in the United States. Other Members may have voted for it for an entirely different reason.

Surely we can not be permitted to speculate as to why Congress, as a whole or as individuals, would wish to include or exclude one of the well-known grades of wool from the protective tariff provision. That is their business, not ours.

The amendment, offered by Senator Lodge, to strike out the words "commonly known as clothing wool" and insert "all wool" is illustrative of how unsatisfactory such testimony would be if we were permitted to enter that field. The importers and the Government, both, with equal plausibility, may point out how it reflects the understanding of one branch of Congress.

Since we are passing upon the meaning of certain words used in paragraph 18, it is important to note that the paragraph, after laying a duty upon clothing wool, says, "but not such wools as are commonly known as carpet wools." There are clothing carpet wools and combing carpet wools, well known to the trade. Carpet wools, while probably chiefly used in carpets, are also extensively used in making some kinds of wearing apparel, where coarseness of texture is important or not objectionable, such as felt clothing. If wool commonly known as "clothing wool" is wool that goes into the making of clothing, then wool commonly known as "carpet wool" is wool that goes into the making of carpets. And, by the same reasoning, such wools as would ordinarily be classified as carpet wools and which are used in making clothing, should be charged a duty under paragraph 18.

We think when the statute said "commonly known as carpet wool" it had reference to that class of wool known to the trade and well understood by Congress in all of its legislative acts as that coarse fibered wool which is distinguished from the finer fibered clothing wools and combing wools. Where is carpet wool commonly known? Among the producers of wool, on the street, or in the trade? We feel certain that the Government would contend that there is no common meaning for carpet wool other than that given to it by those familiar with the grades of wool. As we said, in our former opinion, Congress, in dealing with the wool question in past years, has used its terms with precision and has never indicated that the common meaning of its words should be determined by the man on the street whose ignorance of the subject would constitute his qualification as an interpreter.

417 In our former opinion we have set out various expressions used in previous tariff acts from March 2, 1867, to 1921, when Congress was referring to wool. The terms used show that the framers of the paragraphs knew the wool business and knew the meaning of the terms used. The words "clothing wools" were frequently referred to and finally "clothing wools" were referred to as Class I. The trade understood and the administrators of the act understood what "clothing wools" were and what Class I was. They used the same words with the addition of the words "commonly known" in the emergency tariff, and now the Government contends

that they used the words in a different sense and that, even if they did use the words "clothing wool" to describe a short-stapled wool in the many preceding acts, in the emergency tariff law they changed the meaning and used the words in a different sense.

Regardless of the weight we attach to this kind of consideration (see Tiger v. Western Investment Co., 221 U. S. 286) it is interesting at this point to examine the tariff act of 1922, passed by the same Congress with practically the same personnel. In paragraph 1101 carpet wool, formerly free, is first treated and a duty of 12 cents per pound is levied upon it. In the next paragraph all wools not specifically provided for receive a duty of 30 cents per pound. Here they departed from the use of the words "carpet wool," "clothing wool," and "combing wool." If the same Congress in 1921, when it said clothing wool meant the wools referred to in 1922 in paragraph 1102, why did it not say so? And if it meant the same thing in 1922 that it meant in 1921, why did it not use the same language, "wool commonly known as clothing wool"? We think it used the words indicated for the very good reason that the framers of the act knew, as Congress had known for a half century, that the words "clothing wool" did not include combing wool.

The court may know, of its own knowledge, the common meaning of a word used in a tariff statute, and may need no outside help, but in its discretion it may consult the dictionaries, lexicons, and recognized authorities, and receive testimony as to the common meaning and application of the word. The fact that it hears testimony as to the common meaning and application of a word used in the act must not be confused with the question of proving commercial designation or a commercial meaning. The commercial meaning and the ordinary or common meaning are presumed to be the same, and, in the instance at hand, we think it is clear that they are the same. Acker v. United States (1 Ct. Cust. Appls. 328; T. D. 3143). Many subjects of importation may come into this country under a tariff act which names them definitely and in unambiguous terms, and at the same time this court may have no knowledge of their common meaning. In determining the meaning, should the court seek information
418 from those who know less about the common meaning of the term than it does? If so, the blind would lead the blind into inextricable difficulties.

We have carefully consulted all available authorities with a view of determining the origin of the term "clothing wool." This search was made with the view that it might throw some light upon the sense in which the term is used in the act under consideration. But nowhere have we been able to find authority definitely establishing the origin or early history of the use of the words.

In this connection it is interesting and probably pertinent to note that in the carding process a carding machine is used, and that one of the essential parts of a carding machine is the "card clothing."

In United States v. Leigh & Butler (7 Ct. Cust. Appls. 228; T. D. 36512) "card clothing" was defined as follows:

"This so-called card clothing consists of strips of leather fastened upon the metal cylinders of a carding machine with rows of upright wire teeth upon them. When the cylinders rotate the wire teeth 'card' the fiber which is fed to them."

It is there and elsewhere explained that the "card clothing" consists of the material and wire teeth which clothe the metal cylinders of the carding machine.

New English Dictionary, Volume II, page 110, defines the compound word "card-cloth" as the leather or india rubber backing of a card; hence "card clothing."

It is not far-fetched to assume that clothing wool had its origin from the fact that in the early days certain kinds of wool passed between the clothing of the cylinders of the carding machine. There is no definite authority for this statement more than above indicated, but it may throw some light upon the question. It, at least, seems more reasonable that this was its origin than to assume that it originated from the fact that short-stapled wool was used in the making of clothing, when we consider that long-stapled wool was always used for the same purpose.

The opinion in Stone & Downer case, supra, is sufficiently replete with authorities on all questions raised to obviate repetition here. The judgment of the Board of General Appraisers is affirmed.

419 The United States Court of Customs Appeals

Judgment

March 23, 1925

[Title omitted.]

Said appeal having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is—

Ordered, that the judgment of the Board of United States General Appraisers be, and the same is hereby, affirmed.

* * * * * * *

(Signed) WILLIAM J. GRAHAM,
Presiding Judge.

420 The United States Court of Customs Appeals

Certificate re mandate

[Title omitted.]

The final mandate in the above entitled appeal, consisting of a certified copy of the order of the court of the 23rd of March, A. D. 1925, was issued to the Board of United States General Appraisers on the 24th day of April, A. D. 1925.

ARTHUR B. SHELTON, *Clerk.*

[Clerk's certificate to foregoing transcript omitted in printing.]

In Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1925

The petition herein for a writ of certiorari to the United States Court of Customs Appeals is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court of the United States

Stipulation and addition to record

Filed Aug. 2, 1926

It is hereby agreed, between counsel for the United States, petitioner, the Stone & Downer et al., in the above-entitled cause, that in addition to the transcript of record certified by the clerk of the United States Court of Customs Appeals on the 16th day of June, A. D. 1925, the following constitute part of the record in said cause and should be filed with the clerk of the Supreme Court of the United States:

1. The Customs entry papers in Suits 2245 and 2463.

2. Exemplified copies of the final judgment and opinion of the United States Court of Customs Appeals in Suit 2245.

3. It is further agreed that all exhibits and illustrative exhibits in Suit 2245, including Exhibits 1 to 15, "D" for Identification, Illustrative "D," Illustrative "E," Illustrative "F," "E" for Identification, Illustrative "G," Illustrative "H," Illustrative "I," Illustrative "J," "F" for Identification, shall be placed in the custody of the Marshal of the Supreme Court at least one month before the case is heard or submitted as required by Rule 16.

It is further agreed that the Customs entry papers covered by item No. 1 supra need not be printed; that the copies of the final judgment and opinion of the United States Court of Customs Appeal in Suit 2245 covered by item No. 2 supra shall be printed.

The foregoing stipulation, insofar as it refers to the record in Suit 2245, is based upon the agreement made at the trial of the present case under which the record in said Suit 2245, including exhibits, was admitted and made part of the present record (R. 23).

CHARLES D. LAWRENCE,
Assistant Attorney General.
EDWARD P. SHARRETTS,
For Stone & Downer, et al.

[File endorsement omitted.]

Opinion of the Court

STONE & DOWNER CO. ET AL. *v.* UNITED STATES (No. 2245)

United States Court of Customs Appeals, November 17, 1923

Before Martin, Presiding Judge, and Smith, Barber, Bland, and Hatfield, Associate Judges

BLAND, Judge, delivered the opinion of the court:

The merchandise covered by this appeal consists of wool, worsted yarn, and worsted cloth. The wool was assessed for duty under paragraph 18 of the emergency tariff act of 1921, reading "wool, commonly known as clothing wool." Appellants claim that the wool in question is combing wool, and that the yarn and cloth are made from combing wool. The yarns and cloth were assessed for duty under paragraphs 287 and 288 of the act of 1913, and in addition 45 cents per pound under paragraph 19 of the emergency act. It is the contention of the importers that combing wool is not included in paragraph 18, and that their importation falls under the free list of the act of 1913, paragraph 650.

The three paragraphs with which this case is concerned are paragraphs 18 and 19 of the emergency act, and paragraph 650 of the act of 1913, as follows:

The emergency act—

"18. Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animals without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

"19. Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufacturers of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law"—

and paragraph 650 of the act of 1913, reading as follows:

"650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective

on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect."

The importers' position is that the words "commonly known as clothing wool" have a well-settled meaning commercially, and with all those who are familiar with the woolen subject, and that "combing wool" is distinct from "clothing wool," and therefore not included in paragraph 18.

The Government contends that "clothing wool" is used here in a broad sense to mean all wool used for making clothing, and that the words "commonly known as" give them a different meaning from that usually applied commercially to a class of wool.

The record sets out the testimony of numerous witnesses, all of whom have had wide experience in connection with some phase of the woolen question either as purchasers, sellers, appraisers, sorters, importers, exporters, or classifiers. It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms "clothing wool" and "combing wool." With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers in the woolen system of manufacturing, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system. The woolen system of manufacturing embraces the process of carding, while the worsted system of manufacturing embraces the process of combing. While there may be exceptions to the rule, short wools are carded and long wools are combed. The two main classes of wools, therefore, have sometimes been stated as consisting of carding wool and combing wool. But, as a general thing, carding wool and combing wool have been used synonymously. The dictionaries, lexicons, encyclopedias, and writers on the woolen industries, as well as such agencies of the Government as the Tariff Commission and the Agricultural Department, very but little in their definitions of clothing wool and combing wool, and all, with but few and immaterial exceptions, define clothing wool as a wool of short fiber used in the woolen process, and distinguish it from combing wool, which they define as another class of wool having a long fiber, used in the worsted process, in which process it is combed. The following are some of the definitions taken from various sources:

"Sheep are classified on the length of staple into short wools, medium wools, and long wools.

"Wool is classed under three general heads: (1) The carding or clothing wools, (2) the combing or worsted wools, and (3) miscellaneous or carpet and blanket wools. (Nelson's Perpetual Loose-leaf Encyc. Vol. XII, Wool, p. 634.)

"The length of staple, which is made a basis of general classification, is largely a constitutional or breed characteristic, the staple

being from 1 to 2 inches long in the finest merinos, 8 inches or more in the Lincolns, and reaching 12 and even 15 inches in some combing wools, the length of staple suggesting the grouping of sheep into short wools, middle wools, and long wools. The fine felting wools have a short staple, as a rule, and are used for carding or yarn purposes, while the longer, more lustrous, and less wavy ones are better suited to combing and worsteds. * * * The three main classes of wool on the basis of staple are: (1) Carding or clothing wools, or those of the merino type, in which felting qualities are desired; (2) combing wools, in which length of staple is required and felting qualities not desired, used for hard-spun, nonfelting worsteds; and (3) miscellaneous, sometimes called carpet or blanket wools, long, strong, coarse wools, used for carpets, blankets, and coarse clothing. The clothing wools are commonly classified as picklock * * *, picklock being an extremely fine fiber. The mass of high-grade clothing is made of the XX and X grades. The combing wools, often called Delaines, were formerly derived from the English mutton breeds, but machinery has been adapted for combing the merino carding or felting wools, which have been lengthened by breeding and selection. The clothing wool used in the United States, aside from home production, is derived mainly from Australia, South America, and South Africa. The imported combing wool comes mainly from Great Britain, although much comes from New Zealand, Argentina, and Canada. The coarse carpet wools are the product of neglected flocks and unskilled breeding throughout the world. (New International Encyc., Wool, vol. 20, pp. 642–643.)

"Wool is divided into pull and clipped or fleece wools, the former being pulled by the roots from the pelt of the dead animal, and the latter clipped from the living one. The clipped wools form the greater part of the wool in market, and these again are divided into long and short staple, or combing and clothing wools. (Appleton's New Practical Cyc., vol. 6, p. 431.)

"Wools are divided into two great classes, clothing wools and combing wools, and the fabrics woven from them are termed woolens and worsteds. (Knight's Cyc. of Industry, Woolen and Worsted Manufactures, p. 1795.)

"According to the Bradford system of manufacture, wools are classed as 'combing' or 'clothing.' A wool to be combing must be at least 2½ inches in length, while wools shorter than that are used for carding and are termed 'clothing.'

"There is a third class called 'carpet wools,' which includes the very coarse wools and inferior wools not well adapted to the finer class of goods for which the first two classes are used. Carpet wools are, however, either carded or combed.

"The introduction of the French comb has made it possible to comb wools of a shorter length than heretofore, and many of the wools formerly used for carding or clothing are now combed with this comb and are known as 'baby combing.'

"The term 'staple' or 'combing' and 'clothing' are often added to the grade names to distinguish them. Both the staple or combing and the clothing of a given grade are the same fineness, but the combing wools are generally used for the manufacture of worsteds, while the clothing is used in the manufacture of woolens. (Encyclopedia Americana, Vol. 29, pp. 501, 502.)

"Wool when shorn is divided into two classes, short wool or carding wool, seldom exceeding a length of 3 or 4 inches, and long wool or combing wool, varying in length from 4 to 8 inches, each class being subdivided into a variety of sorts according to the fineness and soundness of the staple. (Century Dictionary, 1911, Wool.)

"Clothing wool—a fine, close, short-stapled wool. (Webster's New International Dictionary.)

"Wool—The three main classes on the basis of staple are (1) carding or clothing wools, or those of the merino type, in which felting qualities are desired; (2) combing wools, in which length of staple is required; and (3) miscellaneous wools, long, strong coarse wools used for carpets, blankets, and coarse clothing, and sometimes called 'carpet' or 'blanket' wools. (Webster's New International Dictionary.)

"Combing wool—a wool adapted for being combed. (Webster's New International Dictionary.)

"Clothing wool—a compact, fine, short-fibered wool suitable for felting. (Standard Dictionary.)

"Clothing wool—a wool usually short and fine in fiber, specially suited in structure of fiber for the woolen trade.—The Wool Year book, 1923, p. 495. ('Textile Mercury' Annuals.)

"The term 'clothing' is applied to wools specially adapted for woolen manufacturing, distinguishing them from 'combing' wools used in the production of worsted yarns. The properties relate to fineness of fiber, felting, strength and elasticity, length of staple, softness of handle, and purity of color.—Roberts Baumont, 'Woollen and Worsted,' p. 12 (1915).

"Worsted is the fiber of wool all laid exactly parallel. Woolen is crossed and uneven like a spider's web. They take all the long hairs and straighten them exactly parallel; and the shorter ones or noils are used for woolen yarns. Only the long fibered can be made into worsted. The fibers of wool to be used in worsted are separated from the short by combing, and the fibers of woolen are crossed by carding. The former are combing wools. The latter are card and clothing wools, which formerly were the only wools used in cloths. (Wool and Manufactures of Wool, Special Report, prepared by the Chief of the Bureau of Statistics, Treasury Dept., 1888, p. XX.)"

In 1918 the wool division of the War Industries Board issued the following valuation and classification for wool in connection with their Government purchases:

Valuations as of July 30, 1917

	Basis clean scoured
Fine Delaine	$1.85
Fine clothing	$1.75 choice, $1.70 average.
Half-blood staple	$1.68
Half-blood clothing	$1.60–$1.62
Three-eighths staple	1.45
Three-eighths clothing	1.42
Quarter-blood staple	1.32
Quarter-blood clothing	1.30
Low quarter-blood	1.17
Common and braid	1.07

Quoting from page 215, report of the United States Tariff Commission on the wool-growing industry, 1921, we find:

"On the basis of length, the division is into '*combing*' *and* '*clothing.*' Combing wool is used in the Bradford (English) system of worsted manufacture, in which nearly all the shorter lengths are combed out as 'noil,' while the fibers are laid parallel in making the 'tops,' which is the first stage in the manufacturing process after scouring. Strictly clothing wools are adapted only to carding, by which process the fiber is laid in every direction, interlocked or felted, and are manufactured into 'woolen' goods. Noils, which is the by-product of combing and mill waste in general, are used with clothing wools in making some woolens."

The Department of Agriculture of the United States issues various bulletins on the woolen industry, both from the standpoint of the grower and of the manufacturer. Bulletin 206 of the Department of Agriculture, under the title "The Wool Grower and the Wool Trade," on pages 5 and 6, is quoted here as follows:

"CLASSES OF WOOL.—The value of wool is influenced more or less by its length and it is classified accordingly. The longer wools are known as 'combing' and the shorter ones as 'clothing.' * * * This classification is founded upon the English or Bradford system of manufacture, which requires a wool to be about 2½ inches long to be successfully combed. The lower grades of combing wools are usually considerably longer than this, as the coarser wool generally has more length. Clothing wools are shorter. Of late years a class midway between the two has sprung up, known as 'baby combing.' The French combs handle this length of staple quite satisfactorily. The combing wools are used in worsted manufacturing. Only the longer straightened fibers are used and these are placed parallel in the yarn. The short, broken, and tangled fibers are removed and make up the 'noils.' Not only is length required, but also strength. Tender wools will not stand the combing process and are unfitted for this purpose, regardless of length. None but virgin wools are used in the manufacture of worsteds.

"Clothing wools are used in the manufacture of woolens, felts, etc. The fibers are laid in every direction, and instead of attempting to arrange them parallel as in worsteds, the opposite extreme is desired. Noils, shoddy, etc., can be used in this process of manufacture.

"The difference in value between combing and clothing wools is from 2 to 6 cents per scoured pound in favor of the former.

"Coarse, low wools, more or less resembling hair, are classed as carpet wools. A very small amount of these are produced in America, most of those used being imported from Asia. Some navajo wool is used in carpet manufacture."

From the same bulletin, page 18, the following is quoted:

"Classification and grades of territory wool:

Combing—

Fine staple. } usually one grade.
Fine medium staple. }
Half-blood staple.
Three-eighths-blood staple.
Quarter-blood staple.
Low quarter-blood staple. } often one grade.
Coarse, common, low, or braid. }

Clothing—

Fine clothing. } usually one grade.
Fine medium clothing. }
Half-blood clothing.
Three-eighths-blood clothing.
Quarter-blood clothing, or short quarter-blood."

In "Wool and Wool Manufacture, a Brief Analysis for the Layman," 1920, James Paul Warburg writes:

"As we take up the manufacture of worsted and woolen yarns, we shall see how these qualifications play a different part in the two processes. For the present the only difference we are concerned with is staple length. Generally speaking, wools under 2 inches are too short to be combed and are classed as clothing wools. Clothing wools are used for woolens, combing wools for worsteds. In recent years combing machinery has been devised which will comb wools under 1 inch in length so that a considerable quantity of 'clothing wools' now go into worsteds (p. 11)."

In trying to arrive at the proper construction of the words "commonly known as clothing wool," we are first confronted with the question, To whom did Congress intend that the interpreters of the act should look to find out what kind of wool was commonly known as clothing wool? It seems that there can be no possible dispute that if the words "clothing wool" were used by themselves there could be little contention but what the term would exclude combing wool, for the reason that all authorities and sources of information agree that clothing wool is a short-stapled wool used in woolen manufacture and in the carding process. If the Government has any strength to its position at all, it must be by reliance upon the use of words "commonly known as."

While the authorities indicate that under improved methods clothing wools are sometimes used in the worsted process, and that combing wools are sometimes used in the woolen process, it is by

no means the rule, since even with improved machinery they are not easily changed out of their former class and use without loss. In this connection the following authorities may be pointed out:

Encyclopedia Britannica, Vol. XXVIII, eleventh edition, pages 813–815—

"Prior to the invention of a really satisfactory mechanical comb, between 1850 and 1860, the combing operation was the limitation of the worsted trade * * *. The characteristic feature of wool and wool yarns and cloths is the quality of 'felting.' This quality has always been made use of in woolen cloths, but in worsted cloths, until comparatively recently, it has been largely ignored. To-day, however, cloths are made ranging from the truest woolen to the typical worsted, of which it would be impossible to indicate the type of yarn employed without very careful analysis."

Encyclopedia Britannica, new Vol. XXXII, page 1068—

"NOTE.—Large quantities of clothing wool may be employed for combing purposes."

Tariff Commission's Report on Wool Growing Industry, 1921, page 25—

"The board (1911) also pointed out that there was no longer any good reason for distinguishing between Class I and Class II wools, because improvements in combing machinery now make it possible to use much shorter staple wools than formerly in the manufacture of worsted."

On page 26 is found—

"The distinction between Class I and Class II wools seems particularly unnecessary. The amount of wool of Class II now imported is comparatively small. Improvements in machinery are constantly bringing about an interchangeability in the use of different kinds of wool, and the case seems clear for doing away with the distinction. * * * One rate on all wool suitable for making wearing apparel and another rate on what were formerly Class III wools would do much toward this result."

It might be urged that the framers of the emergency law used the words "clothing wool" to embrace classes 1 and 2 in conformity with the apparent recommendation of the Tariff Commission, but it is clear that Congress did not adopt the recommendation of the Tariff Commission, since it did not specifically say "classes 1 and 2," nor did it say, "all wool suitable for making wearing apparel."

The fact that under modern conditions some clothing wool is used in the worsted process, and some combing wool is used in the woolen process, furnishes an additional reason for Congress to have used the words "all wool" or to have included both classes by some appropriate term. Yet there is nothing in the record nor in the history of tariff legislation that tends to show that the interchangeability of use of the two classes of wool has in any way changed the use of the term by those who speak with understanding on the subject. The emergency act does not attempt to consolidate the

two classes of wool under a new term, but emphasizes the ordinary use of the name which is now used, and for generations has been used, to describe one class.

In the briefs and in the argument before this court great stress was placed upon the fact that the Congressional Record of February 1, 1921, at page 2498, shows that Senator Lodge introduced the following amendment:

"Paragraph 18, page 3, line 16, strike out the words 'wool, commonly known as clothing wool,' and in place thereof insert the words 'all wools.'"

As far as we have been able to observe, the courts have never given the introduction of an amendment by a legislator the force of evidence tending to prove legislative intent, but have regarded the action of either branch of the legislature on such an amendment as having probative effect.—Koch v. United States (6 Ct. Cust. Appls. 543–8–9; T. D. 36148), Willenborg & Co. v. United States (6 Ct. Cust. Appls. 451; T. D. 35985), and Dunlap v. United States (173 U. S. 65, 75). While this kind of evidence may be considered as throwing some light upon the question of legislative intent, we are inclined to regard it of doubtful, or at least, uncertain value. We are not privileged to know what motives prompted the acceptance, rejection, or failure of consideration of proposals made by individual members. To rely upon the act of one individual member in proposing legislation, or to give much weight to the failure of the body to consider the proposal, in determining the intent of the completed legislative enactment, would be very unsatisfactory procedure in construing its meaning. It is urged by the appellant that Senator Lodge, by his proffered amendment, recognized that the words "commonly known as clothing wool" did not embrace combing wool, and directed the attention of the Senate to the omission; and it is urged by the Government that the failure of the Senate to discuss or consider the amendment was evidence that the Senate believed the words "wool, commonly known as clothing wool," embraced all wool, and that the amendment was unnecessary. However, this court in Koch, supra, in construing paragraph 166 of the act of 1913, took special notice of a somewhat similar case, in which an amendment introduced by Senator Smoot was referred to, but in that instance the amendment of the Senator was rejected by affirmative action of the Senate.

In the case of Dunlap v. United States, supra, we find the following:

"Without questioning the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of a statute passed by that body (United States v. Trans-Missouri Freight Association, 166 U. S. 290, 318), it is nevertheless interesting to note that efforts were made in the Senate to amend the bill by the addition of sections which, while making alcohol used in the arts free from the tax, sought to secure the Government from fraud by provisions for the methylating of such spirits, so as to render them unfit for use as a beverage; that these proposed amend-

ents were rejected (26 Cong. Rec. 6935, 6936); and that subse-
iently section 61 was adopted as an amendment, it being urged in
s support that 'if the Secretary of the Treasury and the Commis-
oner of Internal Revenue think they can not adopt any regulations
hich will prevent fraud, then nothing will be done * * *.'"

It will be noted that there was affirmative action upon the amend-
ents and that the court in rendering its decision did not rely upon
e debates in Congress or upon the thought of one individual in
troducing an amendment.

At any rate we can not see how the introduction of the amend-
ent of Senator Lodge and the subsequent failure of the Senate to
t upon the same can give us any light upon the intention of Con-
ress in its use of the terms under consideration.

If the terms used by Congress in the case at bar were ambiguous
r indefinite, we might look further into the extrinsic circumstances
ncident to the passage of the act. Since the terms used are unam-
iguous, it is not proper to permit such evidence to impeach, destroy,
r change the ordinary meaning of the language used, for such pro-
edure would result in subjecting all laws to the hazard of a most
ncertain and unreliable rule of interpretation. In the light of this
osition it is unimportant for us to consider the statements of the
hairman and members of the Committee on Ways and Means, the
eport of the committee, and other evidence of this character.

Tariff laws, while subject to the same rules of construction and
egal principles for the most part as other legislative acts, yet have
uring a century and a half of application acquired certain charac-
eristics not found in other legislation, and certain definite princi-
les of law have been laid down by the courts in construing tariff
aws which of necessity do not apply to other kinds of legislation.
We think it is well settled that tariff laws generally are framed in
he language of men engaged in commerce, and are so framed that
hey may be understood by them, and that tariff laws are directed to
he understanding of the class of citizens who are to operate under
hem, or who are to be affected by their provisions.—United States
. Davies (11 Ct. Cust. Appls. 392; T. D. 39317); Hedden v. Rich-
rds (149 U. S. 346, 349).

In the Davies case, supra, the court said:

"Congress is presumed to know the nomenclature and language of
ommerce. Tariff laws apply especially to men engaged in com-
nerce and are drafted in the words and terms and vocabulary which
re in use and understood by the trade. Tariff designations must
e held, therefore, to have the sense and meaning assigned to them
y trade and commerce, and a distinction once made by Congress
s to tariff commodities will be presumed to continue in the absence
f anything showing a contrary legislative intention."

In the Hedden case, supra, the court said:

"In such case, as in the other case, the words are to be taken in
he sense in which they will be naturally understood by those to
whom they are addressed (p. 350)."

In the case of Elliott v. Swartwout (35 U. S. (10 Pet.) 137), in holding that "worsted" was not woolen goods under the act of 1832, the court said:

"Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce, and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. This rule is fully recognized and established by this court, in the case of Two Hundred Chests of Tea, reported in 9 Wheat. 438. The court there say, the object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade. Whether a particular article was designated by one name or another, in the country of its origin, or whether it were a simple or mixed substance was of no importance in the view of the legislature. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic, and it would have been as dangerous as useless to attempt any other classification than that derived from the actual business of human life. It being admitted in this instance that worsted is a distinct article, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense and as contradistinguished from wool, and woolen goods, and other well-known denominations of goods (p. 150)."

This rule seems not only to be well settled but to be well grounded in principle. To whom should Congress address its tariff acts? To the populace on the street, who have nothing to do with the subject matter of the legislation? Or, should they be directed to those from whom the Congress expects obedience, and to its officers upon whom its administrative duties fall?

In the question at bar whom will we consult as to the meaning of the term "commonly known as clothing wool"? It has been suggested here that the inquirer should go out into the street and at random ask any English-speaking individual the meaning of the phrase "commonly known as clothing wool." It is urged that this would elicit the answer, "Wool from which clothing is made." It probably would elicit the answer, "I know nothing about the woolen business." But, if perchance, one familiar with growing, selling, importing, exporting, buying, grading, sorting, manufacturing, or handling wool in any way was asked the question, in our judgment he would say, "'Wool, commonly known as clothing wool,' is a wool of short fiber used in the woolen process, and is usually a carding wool." And if he were asked, "What is 'combing wool'?" he would reply that "it was distinguished from clothing wool chiefly on account of its long staple, which permitted it for the most part to be combed." Should interpreters of the act, in seeking to properly classify a product, and in order to find out the definition of the

words used, seek those who know nothing about the different classes of the article? Surely this would be to impute to Congress an absurb intention. Who is it that "commonly" knows clothing wool? The Government's position implies that there is a great class of citizens who are not engaged in the wool trade in any way, and who are not students of the wool question, and who have never consulted the dictionaries, encyclopedias, etc., but who have knowledge on the subject of clothing wool which we need in determining the intent of Congress. The class of people the Government has in mind may know what wool is, but probably have never heard of "clothing wool." Would it not be absurd to declare that Congress intended that the interpreters of the act, in trying to determine its meaning, should go to those who had never heard of the term rather than to those to whom the act was directed, or to those familiar with the use of the term wherever and whenever it is used? We can, therefore, see no additional meaning given to the words "clothing wool" by the use of the words "commonly known as," and in arriving at the conclusion we have considered the fact that it has not been shown in this case that there is any difference or any distinction between what is "commercially" known and what is "commonly" known. Indeed, we can see no difference in the meaning or application of the phrases "commonly known" and "usually known."

Paragraph 362 of the act of 1909 is as follows:

"362. Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, Angora goat, alpaca, and other like animals."

The corresponding provisions in the acts of 1897, 1890, 1883, and 1867 contained the same phrase, and as far as we know no court or administrative official has held that the phrase "usually known" changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade.

There are cases where the imported article may have a definite commercial designation and yet be commonly known by another name. If in that instance Congress uses the words "commonly known as" in describing the article by a name other than the commercial term, then in construing its meaning, the courts universally hold Congress to have excluded the commercial designation.—Cadwalader v. Zeh (151 U. S. 171); Roosevelt v. Maxwell (20 Fed. Cas. 1155). But this is not a case where the commercial designation is relied upon by the importer; a commercial designation is not before us. But even if it were, there seems to be but one understanding as to the meaning of "clothing wool." In the case of Tiffany v. United States (131 Fed. 398), certain silver handbags or purses were held excluded from paragraph 434, act of 1897, which provided that "articles commonly known as jewelry," etc. Upon the testimony of commercial witnesses, the court said:

"The uncontradicted testimony of witnesses from various branches of trade, including dealers in jewelry, fancy goods, silverware, and of

salesmen in department stores, shows that these articles are not commonly known as jewelry, and are not manufactured in jewelry factories, or sold as articles of jewelry."

It seems that this case stands on all fours with the case at bar. There the commercial definition of jewelry as taken from those familiar with the business was held to be the same as was "commonly known."

In Swan v. Arthur (103 U. S. 597), the court said:

"While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

There is certainly no showing in this case that the term "clothing wool" has a common or ordinary use different from its use among commercial men.

It is urged with much force by the Government that Congress intended the emergency to levy duty on all wools except carpet wools, and that this court should declare the combing wool in controversy in this case clothing wool within the broad meaning of the act. It is urged that the court is privileged to take into consideration the conditions of commerce and trade on the date of the passage of the statute, the necessity for a protective tariff to be levied on combing wool which was seeking admission into our home market already filled with the home-produced product; that the report of the Tariff Commission before the framers of the law, the statements of members while in committee, and the debates of Members of Congress while on the floor should be permitted to override the plain wording of the act in determining the legislative intent. The reasons and arguments set out by the Government in their very forceful brief and oral argument are quite impressive in that direction. After thoroughly considering the history of the legislation, the commercial and trade conditions at the time of its enactment, and the committee's report on the bill, as well as other related documents, we are impressed with the fact that Congress may have thought that there was a necessity for levying a duty upon combing wool, and even, we dare to say, some Members of Congress may have felt that section 18 including combing wool. Some of them no doubt did not think that the terms used included combing wool. Some Members may have supported the legislation believing it covered all wool not expressly exempted, while others no doubt supported it because, according to their interpretation of the term, it did not include certain wools. To hold that Congress in its completed enactment, by the use of the words "commonly known as clothing wool" meant to include "combing wool" is to do violence to every rule and canon of construction known to tariff jurisprudence. The courts in construing tariff laws have almost uniformly held that it is the judicial function to construe the language as found in the statute, giving the words used their ordinary meaning, and, where the language is plain, that the legislative intent can not be declared to be other than what the ordinary meaning of those words will im-

port in the absence of evidence establishing a commercial mean. different from the ordinary meaning.—Ringk & Co. v. United State. (10 Ct. Cust. Appls. 107; T. D. 38372); Merck v. United States (151 Fed. 14). In the latter case, the court said:

"The courts can only ascertain the legislative intention by the language used, and it is not their duty by a distorted construction to attempt to cover an article which may have been omitted even by inadvertence (p. 15)."

No matter how great the emergency may be for a different construction, or what this court may think of the wisdom of Congress in failing to say "all wool," or to say "clothing wool and combing wool," or "Classes I and II," it would be a far-reaching and dangerous precedent to hold that the author of the bill did not know what he was saying when he introduced the bill, and that the committee did not know what they were reporting when they reported the bill, and that Congress did not know what it was making dutiable when it was enacting the legislation, and that the Executive did not know the meaning of the words in the act when he approved it.

In United States v. Marsching (1 Ct. Cust. Appls. 216; T. D. 31257), the court said:

"While it is true that every provision of law must be read in the light of all the other provisions of that law, and while it is true that the meaning of Congress, particularly in tariff legislation, must be ascertained in the light of conditions of commerce, and that in this light the language used by Congress must be interpreted, or even in some cases supplied, we do not think that in a case like this where the essential words supporting the construction contended for have been expressly omitted by Congress the courts can by any rule or method of construction read back into the act such words. * * * The fact that some inconsistency may be wrought by this holding, or that some inequalities of duties may be levied, or that some disturbance may be had in the remaining or other provisions, is not sufficient warrant for the court to read back into the statute language expressly omitted therefrom by Congress. In the opinion of the court the language of the act is plain and unambiguous. The rule is well settled that in the presence of such a provision the court should abstain from interfering with the will of Congress as expressed."

The Supreme Court of the United States in Bate Refrigerating Co. v. Sulzberger (157 U. S. 1, at p. 37) said, restating an earlier opinion set out in Scott v. Reid (35 U. S. (10 Pet.) 524):

"Where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

In United States v. Fisher (6 U. S. (2 Cr.) 358, 385), Chief Justice Marshall said that where the meaning of the legislature was plain "it must be obeyed."

In United States v. Shing Shun & Co. (173 Fed. 844), the court said:

"Where the language employed in an act is clear and certain, they [the court] have nothing to do with the reasonableness or justice of the results flowing from according it its natural, usual, and obvious meaning, nor with any supposed policy actuating its framers (p. 847)."

The rule is very definitely laid down in Coles v. Collector (100 Fed. 442) as follows:

"To undertake a departure from the language used would in fact be an unjustifiable assumption by the court of legislative power. It is the duty of the court, where the language is free from doubt or uncertainty, to confine itself to the words of the legislative body that enacted the law, without adding thereto or subtracting anything therefrom."

Now, in the case at bar, having in mind all the evidence and all the definitions in all the books, authorities, and reports, and having before us the use of the terms by Congress in past legislation, is the meaning of the words "clothing wool," or of the phrase "commonly known as clothing wool" free from doubt or uncertainty? Is the definition well settled and free from ambiguity? If these questions are answered in the affirmative, this court has but one duty, and that is to "confine itself to the words of the legislative body."

Since the earliest days of the Republic's legislative life it has been confronted with the problem of levying duty upon wool. Congress has used many different words and phrases with many different meanings in its legislation on that question, and the past acts of Congress show that it possessed scientific and accurate knowledge on the subject. Its woolen schedules have been prepared in the language of, and for the understanding of, those who had acquired special knowledge of the subject matter. Can this court properly hold that in the preparation and passage of the emergency act it departed from all of its previous understanding of the definitions and application of terms, and intended that a different rule of interpretation should be applied to this special piece of legislation? It might be well for a fuller understanding of the legislative history to set out extracts from the various tariff acts of the past:

"May 19, 1828.—First. On wool unmanufactured, four cents pound: * * *

"July 14, 1832.—First. Wool, unmanufactured * * *

"March 16, 1855.—* * * pelts; wool: * * * free duty * * *

"March 3, 1857.—* * * sheep's wool, unmanufactured, of the value of twenty cents per pound * * * and hair of the alpaca the goat, and other like animals * * *

"March 2, 1861.—Sec. 12. First. On all wool unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * Provided, That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

"Sec. 23. Wool, unmanufactured, and all hair of the goat, alpaca, and other like animals, unmanufactured * * *

"June 30, 1864.—Sec. 4. On all wool, unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

"July 28, 1866.—* * * in determining the dutiable value of merchandise * * * provided further that nothing herein contained shall apply to long-combing or carpet wools * * *

"March 2, 1867.—* * * there shall be levied, collected, and paid on all unmanufactured wool, hair of the alpaca, goat, and other like animals * * * All wools, hair of the alpaca, goat, and other like animals, as afore-said, shall be divided, for the purpose of fixing the duties to be charged thereon, into three classes, to wit:

"Class 1. Clothing wool. That is to say, merino, mestiza, metz, or metis wools or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from * * *, and also including all wools not hereinafter described or designated in classes two and three.

"Class 2. Combing wool. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, or other like combing wools of English blood, and usually known by the terms herein used; and also all hair of the alpaca, goat, and other like animals.

"Class 3. Carpet wools, and other similar wools. Such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere.

"June 6, 1872.—Sec. 2. On all wools, hairs of the alpaca, goat, and other like animals and all manufactures wholly or in part of wool or hair of the alpaca and other like animals, except as hereinafter provided (90 per cent of duty of 1867, the tax imposed being 90 per cent of the then existing duty).

"March 3, 1883.—Schedule K.—Wool and woolens. All wools, hair of the alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

"Class one, clothing wools. That is to say, * * * (Same as in 1867).

"Class two. Combing wools. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms

herein used, and also all hair of the alpaca, goat, and other like animals.

"Class three. Carpet wools, and other similar wools. (Same as in 1867.)

"October 1, 1890.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

"Class one. That is to say * * * (Same as in 1883.)

"Class two. That is to say * * * (Same as in 1883.)

"Class three. That is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools hereinafter provided for.

"August 27, 1894.—Free list. Par. 685. All wool of the sheep, hair of the camel, goat, alpaca, and other like animals, and all wool and hair on the skin, noils, yarn waste, card waste, bur waste, slubbing waste, roving waste, ring waste, and all waste, or rags composed wholly or in part of wool, all the foregoing not otherwise provided for.

"July 24, 1897.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes:

"Class one, that is to say, merino, mestiza, metz, or metis wools, or other wools of Merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including Bagdad wool, China lamb's wool, Castle Branco, Adrianople skin wool or butcher's wool, and such as have been heretofore usually imported into the United States * * * and all wools not hereinafter included in classes two and three.

"Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down clothing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, Angora goat, alpaca, and other like animals.

"Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

"August 5, 1909.—360. All wools, hair of the camel, goat, alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

"361. Class one, that is to say, merino * * * (Same as in 1897.)

"362. Class two, that is to say, Leicester * * * (Same as in 1897.)

"363. Class three, that is to say, Donskoi * * * (Same as in 1897.)

"October 3, 1913.—Free list. Par. 650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect."

Nowhere in the century and a quarter gone will you find in its written word, in woolen tariff legislation, anything to indicate that Congress did not fully understand the meaning of its words, or that it did not apply and carefully select them with a view to informing those to whom the law was directed exactly what kind of merchandise they were to deal with. We are not unmindful of the rules invoked by the Government that the intent of the law is the law, and that courts must not impute to the legislature the doing of a ridiculous, vain, or absurd thing. If the words used were susceptible of more than one reasonable construction, we would have a different question. For this court to hold that the phrase "commonly known as clothing wool" embraces and includes "combing wool" would be for this court to legislate, and thereby usurp the functions of Congress. From many viewpoints this might be desirable in this case, but it would be embarking upon a very dangerous and uncertain course, which precedent, if followed, would lead to disastrous consequences. The rule laid down in Elliott *v.* Swartwout, supra, in our judgment should be followed, and a strict adherence to this principle, which, for the most part, has been adhered to in the past, will be conducive to the best understanding of and fullest compliance with the purposes of legislation.

If we expect proper respect for laws and a compliance with their provisions; if we hope for a proper understanding in the administration of them, the meaning justified by the words used must not be overthrown by extrinsic circumstances. We hold that when Congress used the phrase "commonly known as clothing wool," it knew that there was a definite kind of wool known to its citizens who were familiar with the question as "clothing wool," and that it must be declared to have intended the ordinary and usual meaning of its words. Clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on date of the entry, was on the free list of the act of 1913. The protests should have been sustained. The judgment of the Board of General Appraisers is reversed.

[Rehearing denied February 9, 1924]

BLAND, Judge: Replying to the Government's brief, on petition for rehearing, importers have conceded, as the Government claims, that Exhibit 13 was not combing wool but was clothing wool. The opinion of this court in this case, we think, is sufficiently clear to indicate how Exhibit 13 should be classified, but to obviate any

doubt on the question as to how it should be classified we find that Exhibit 13 was in fact clothing wool.

Accordingly the judgment heretofore entered by the court is modified so as to affirm the judgment of the Board of General Appraisers with respect to the merchandise represented by Exhibit 13. In all other particulars our former judgment is reaffirmed, and the petition for a rehearing is denied.

In United States Court of Customs Appeals

Saturday, February 9, 1924

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 9th day of February, A. D. 1924.

* * * * * * *

STONE & DOWNER CO., JOHN R. CONKEY, J. A. KARNHEIM, Lowe, Donald & Co., appellants
v.
THE UNITED STATES, APPELLEE
} No. 2245

Judgment

Said appeal having heretofore been brought on to be heard before the court, upon the petition of the appellee for a rehearing, due consideration thereof having been had, it is

Ordered, That the former judgment of the court herein be, and the same is modified, and the judgment of the Board of United States General Appraisers, in so far as it relates to the merchandise represented by Exhibit Numbered 13, be, and the same is hereby, affirmed; and that as to all other merchandise covered by said appeal said judgment be, and the same is hereby, reversed, and said merchandise is held not to be dutiable under the emergency tariff act of 1921, but to be free of duty or dutiable at the appropriate rates of the tariff act of 1913; and said appeal is remanded to said board for proper action in the premises.

It is

Further ordered, That the application of the appellee for rehearing be, and the same is hereby, denied.

* * * * * * *

(Signed) GEO. E. MARTIN,
Presiding Judge.

In United States Court of Customs Appeals

No. 2245

Certificate re mandate

The final mandate in the above-entitled appeal, consisting of a certified copy of the order of the Court of the 9th day of February,

1924, was issued to the Board of United States General Appraisers on the 20th day of February, 1924.

JOSEPH G. GAUGES,
Assistant Clerk.

In United States Court of Customs Appeals

No. 2245

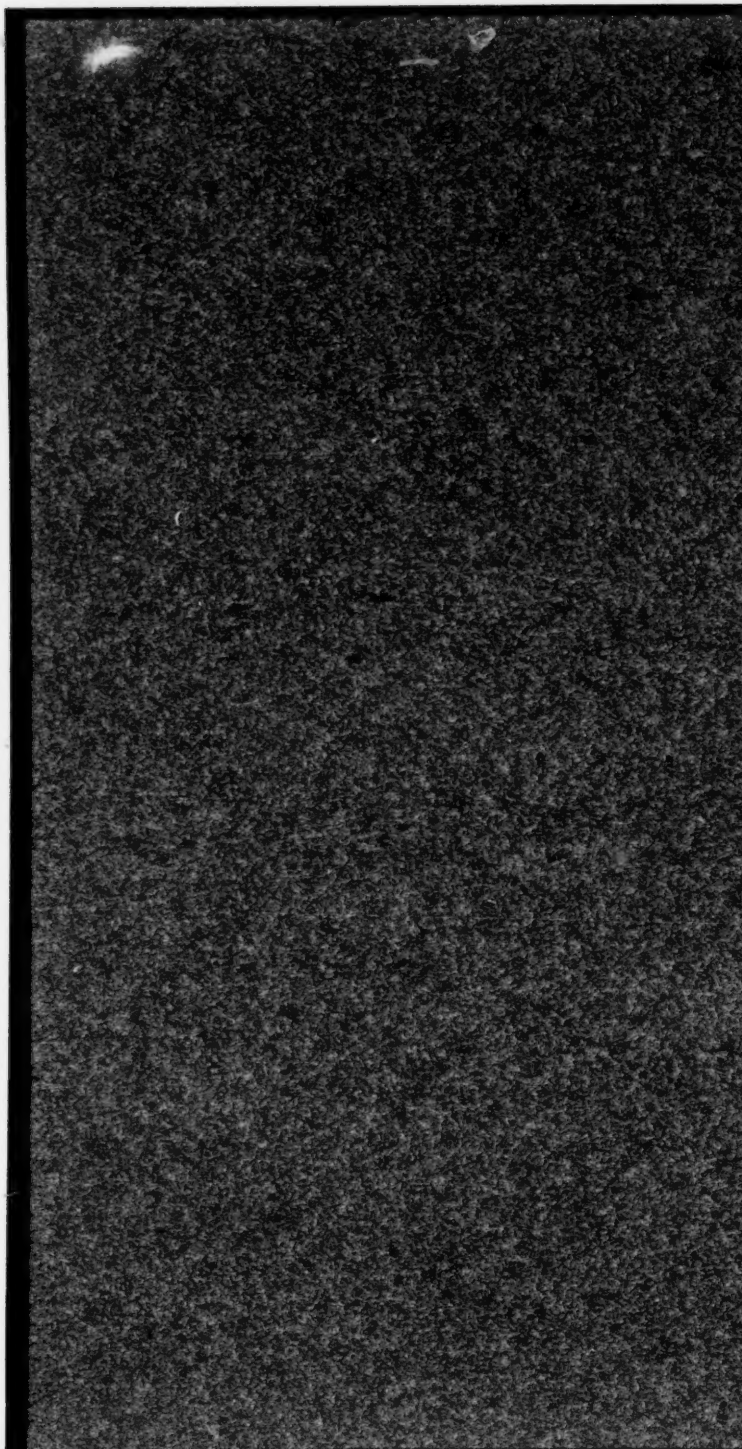
Clerk's certificate

I, Joseph G. Gauges, assistant clerk of the United States Court of Customs Appeals, do hereby certify that the foregoing opinion and judgment in the above-entitled appeal is a true and complete copy of the opinion and judgment rendered by the United States Court of Customs Appeals in this case as the same remain of record and on file in this office.

Witness my hand and the seal of this court, this 30th day of July, A. D. 1926.

[SEAL] JOSEPH G. GAUGES,
Assistant Clerk.

○



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In the Supreme Court of the United States

OCTOBER TERM, 1925

THE UNITED STATES, PETITIONER
v.
STONE & DOWNER CO. ET AL. } No. ——

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS, AND BRIEF IN SUPPORT THEREOF

The United States prays that a writ of certiorari issue to review the judgment of the United States Court of Customs Appeals in the above-entitled cause rendered March 23, 1925, T. D. 40784.

This petition is filed pursuant to section 195 of the Judicial Code, as amended August 22, 1914, c. 267, 38 Stat. 703.

On December 23, 1924, prior to the decision of the Court of Customs Appeals, the Attorney General duly filed in the office of the Clerk of the Court of Customs Appeals a certificate under section 195 that in his opinion this case is of sufficient importance to render expedient its review by this Court.

STATEMENT

Certain importations of wool, wool yarn, and wool cloth were entered at the port of Boston during the period from November 10, 1921, to July 3, 1922, and the collector of customs at that port levied duties thereon under the provisions of the Tariff Act of October 3, 1913, c. 16 (38 Stat. 114), as amended by the provisions of the Emergency Tariff Act of May 27, 1921, c. 14 (42 Stat. 9).

More specifically, the wool was classified and duty assessed thereon at the appropriate rate provided in paragraph 18 of the Emergency Tariff Act for:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools * * *.

The wool yarn and wool cloth were classified and assessed for duty under the specific provisions therefor in the Tariff Act of 1913, *supra*, and in addition thereto duty was levied at the rate provided in paragraph 19 of the Emergency Tariff Act on "manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value."

The importers, respondents, protested the action of the collector of customs pursuant to the provisions of paragraph N of section III of the Tariff Act of October 3, 1913 (38 Stat. 114, 187), claiming that the wool was entitled to exemption from duty

under paragraph 650 of the Act of 1913 (38 Stat. 164), and that the yarn and cloth were not subject to the additional duty provided in paragraph 19 of said Emergency Tariff Act.

The Board of United States General Appraisers sustained the protests of the importers, and on appeal to the Court of Customs Appeals the judgment of the Board of General Appraisers was affirmed.

THE QUESTION PRESENTED

The question presented is whether the importations of wool, which, it has not been disputed, are commonly and chiefly used in the fabrication of clothing, were properly classified and assessed for duty by the collector of customs under the provisions of paragraph 18 of the Emergency Tariff Act, *supra*, as:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

If the wool was properly classified under said paragraph 18 of the Emergency Tariff Act, it automatically follows that the yarn and cloth were subject to the additional duty provided in paragraph 19 of said act.

THE STATUTES INVOLVED

Paragraph 18 of the Emergency Tariff Act of May 27, 1921 (42 Stat. 9, 10), under which the wool was classified for duty:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Paragraph 650 of the Tariff Act of October 3, 1913 (38 Stat. 114, 164), under which the court held the merchandise was entitled to free entry:

> Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Paragraph 19 of the Emergency Tariff Act (42 Stat. 10), under which the additional duty was levied upon the wool yarn and wool cloth:

> Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

REASONS FOR GRANTING THE WRIT

I

(*a*) The Court of Customs Appeals erred in holding that wool which is commonly and chiefly used in the manufacture of clothing is not "wool, commonly known as clothing wool."

(*b*) It disregarded numerous decisions of that court and of this Court in declining to review the history of the times or to consider various matters of judicial notice surrounding the enactment of the Emergency Tariff Act.

(*c*) It disregarded rules of construction common to the interpretation of customs law heretofore adopted and followed.

(*d*) It improperly applied testimony as to the *commercial* meaning of the term "clothing wool" to establish the *common* meaning of the term.

(*e*) It did not give due force and effect to the testimony introduced on behalf of the Government in aid of the common meaning of the term clothing wool.

II

The amount of refunds involved in this case is over $200,000, and approximately 4,000 protests against the decisions of the collector of customs covering approximately 14,000 entries are pending. These protests involve the refund of more than $10,000,000 (officially estimated), and their disposition will depend upon the decision in this case. Consequently this case is one of great public interest and of importance to the Treasury of the United States in its administration of the revenue laws and in disposing of the 4,000 suits above mentioned.

For these reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

WILLIAM D. MITCHELL,
Solicitor General.
WM. W. HOPPIN,
Assistant Attorney General.

JUNE, 1925.

BRIEF IN SUPPORT OF PETITION

I

Preliminary statement

As a preliminary statement it may well be pointed out that the dutiable status of similar importations of wool was originally presented to the Court of Customs Appeals in the case of *Stone & Downer Co. et al.* v. *United States*, 12 Ct. Cust. Appls. —, T. D. 40019, 45 Treas. Dec. 167. In that case the court was of the opinion (p. 178) that there was " no showing in this case that the term ' clothing wool ' has a common or ordinary use different from its use among commercial men."

We submit, however, that there was clear evidence in that case on behalf of the Government of a common meaning different from the commercial meaning as testified to by the witnesses for the importers. However, in view of the above statements of the Court of Customs Appeals, the Government in the instant case introduced the testimony of five additional witnesses, to supplement the evidence already introduced in the first case, in aid of the common meaning of the term " clothing wool " in contradistinction to the commercial or technical meaning of the term as claimed by the importers.

That case, like the instant one, was instituted by protests which were filed against the decisions of the collector of customs at Boston in classifying importations similar to those in the case at bar under the provisions of paragraphs 18 and 19 of the Emergency Tariff Act. The Board of General Appraisers (one member dissenting) overruled the protests of the importers in that case, but on appeal to the Court of Customs Appeals the judgment of the Board was reversed. Subsequently the trial in this case was had before the Board of General Appraisers on other protests relating to similar importations and while the record in the former case was incorporated and made part of the record herein, a great deal of additional testimony was introduced in the present case to substantiate that introduced by the Government in the former case, as already pointed out.

In the present case, made up as aforesaid, the Board sustained the claims of the importers upon the authority of *Stone & Downer Co. et al.* v. *United States, supra.* The Board's decision was subsequently affirmed by the Court of Customs Appeals, and it is now sought to have the judgment of affirmance reviewed by this Court.

II

The Emergency Tariff Act of May 27, 1921

The preamble to the Emergency Tariff Act of May 27, 1921 (42 Stat. 9), reads:

> An Act imposing temporary duties upon certain agricultural products *to meet present emergencies,* and to provide revenue; to regulate commerce with foreign countries; *to prevent dumping of foreign merchandise on the markets of the United States;* to regulate the value of foreign money; and for other purposes. (Italics ours.)

The title of the act and its declared purposes would seem to suggest that if any doubt arises as to the meaning of its provisions, inquiry should lead into an examination of the history of the times preceding its enactment and due consideration should be given to reports of Congressional committees, statements of chairmen of such committees, and other facts of which judicial notice may be taken in ascertaining the intent of Congress. This the Court of Customs Appeals failed to do, or, in any event, it declined to give due force and effect to such considerations in arriving at the intent of the provisions of the Act.

That the importers, respondents, regarded the meaning of the words:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools

in paragraph 18 of the Emergency Tariff Act as of doubtful import, is indicated by the fact that they found it expedient to introduce a great deal of testimony from wool merchants regard-

ing the commercial or technical trade classification of the commodity. It will be noted that the language in paragraph 18 is addressed to the common rather than the commercial meaning of the words "clothing wool."

In the first case of *Stone & Downer Co. et al.* v. *United States, supra,* the Board of General Appraisers was divided two to one upon the meaning of the language of paragraph 18, *supra,* T. D. 39473, G. A. 8613, 43 Treas. Dec. 141. As pointed out, however, that decision was reversed by the Court of Customs Appeals in *Stone & Downer Co. et al.* v. *United States,* 12 Ct. Cust. Appls. —, T. D. 40019, 45 Treas. Dec. 167.

III

Intent of Congress

It is a cardinal rule of construction that a legislative act should be interpreted according to the intention of the legislature. This is so even though the intent when ascertained may not be consistent with the strict letter of the statute. Lewis' Sutherland Statutory Construction, vol. 2, sec. 363, p. 693, and cases cited. See also *Church of Holy Trinity* v. *United States,* 143 U. S. 457, 459.

IV

History of the times

In *United States* v. *Union Pacific R. R. Co.,* 91 U. S. 72, 79, this Court said:

> Courts, in construing a statute, may with propriety recur to the *history of the times* when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. (Italics ours.)

See also *Ozawa* v. *United States*, 260 U. S. 178, 194.

It becomes important, then, in view of the purpose of the Act, as recited in its preamble, to consider the history of the times preceding its passage, in order to ascertain the intent of Congress.

For a number of years prior to the passage of the Emergency Act of 1921, wool of the sheep, hair of the camel "and other like animals," and all wools and hair on the skin of such animals, were granted freedom from duty. (Par. 650, Act of 1913, 38 Stat. 164.) During that period the only similar product upon which a duty was levied when imported into this country was the "hair of the angora goat, alpaca, and other like animals." (Par. 305, Act of 1913, 38 Stat. 143.)

In the presence of these facts, what was the object, purpose, or intent of Congress in framing paragraph 18 of the Emergency Act and carving out of the free list "wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca"? Much light is afforded in answering this question by reference to Congressional records and documents and to the history of the times immediately prior to the enactment

of May 27, 1921, and we shall take occasion briefly to enumerate some of the considerations which seem to have been uppermost in Congressional thought and whose influence actuated the legislation which culminated in the provisions of the Emergency Act involved in this proceeding.

Following the close of the World War in the fall of 1918, there was a surplus of the world's stock of raw wool, and in 1920 there seems to have been a general decline in wool prices—financial stringency, industrial stagnation, and unemployment being contributing causes. Fully recognizing the principle that agriculture is the fundamental basis of prosperity in this country, Congress, in order to avoid the possible destruction of industries requiring years to develop and to avert serious financial difficulties then impending, resorted to an emergency tariff as a temporary means of relief pending the enactment of a permanent bill. As a result the Emergency Tariff Act was placed upon the statute books May 27, 1921. In reporting the bill (H. R. 2435) to the House of Representatives, Mr. Young, of the Committee on Ways and Means, submitted a report, from which we quote the following (H. Report No. 1, p. 2, 67th Cong., 1st sess.):

> One of the most serious obstacles to the revival of industry is the paralysis of agriculture. Title I of this bill, to protect certain farm products, is submitted to Congress for the welfare of the nation as a

whole. It is not sectional. It is not for the benefit of one class, because its passage will be for the good of all. The purchasing power of farmers has been in large part destroyed and must be restored before good times can be hoped for.

While it is true that we are in the grip of a nation-wide industrial and business depression, which has distressed many, impartial observers are of the opinion that agriculture is the hardest hit of all. In addition to abnormally low prices, and in some instances no price at all, practically everything the farmers buy is from 50 to 100 per cent higher than pre-war levels.

The consuming public and the commercial public have an absolute and definite interest with the farmer in helping him to make cost of production and a fair profit.

The primary interest of the consuming public in the farmer is that he keep on producing food. The farmer will do that only if he makes a profit on his productions. If he must sell his commodities below cost of production he must go out of business or lower his standard of living to such an extent that he is a public menace. In either event the consuming public will suffer.

At page 5 the report reads in part as follows:

The prosperity of this country is based primarily on agriculture. If the American public permits class after class of American farmers to be driven out of their industries by competition from one source or

another, the whole country will be impoverished gradually but surely. The farmer will not be the only sufferer; the whole public will go down with him. This is the teaching of history.

The sooner the average man realizes that his interest is absolutely inseparable from that of the agricultural producer, the sooner will the entire country be on a more prosperous footing.

With specific reference to the subject of wool, we quote as follows from pages 7 and 8 of said report:

(1) In previous years the average production of wool in the United States was 314,000,000 pounds and average imports 203,000,000 pounds.

During the war imports increased in response to increased manufacturing to about 445,893,000 pounds in 1919, and declined to 259,618,000 pounds in 1920.

(2) Both importation and consumption of wool have decreased since May. However, there has been a large increase for January and February, 1921. Importations in recent months appear to be speculative, in anticipation of tariffs.

(3) The stocks of wool on hand were large when the price slump came last May. To the stocks on hand was added the new clip of 280,000,000 pounds.

(4) The accompanying tables show the wool supply in sight to be near 1,000,000,000 pounds. The normal consumption is

about 600,000,000 pounds, with about 400,000,000 pounds carried as stock. A year's supply is in sight at normal consumption. At the present rate of consumption (about two-thirds normal) the supply would be sufficient for a year and a half.

(5) The effect of an embargo or high tariff would be to gradually increase the prices.

The justification for an emergency tariff is:

(*a*) A fundamental industry that it takes years to develop is facing ruin.

(*b*) The prosperity of large numbers of people, not sheep growers, is dependent on the sheep industry. Hence, merchants and bankers who have made large advances to sheep producers are in serious financial trouble and favor a wool tariff.

(*c*) At present the supply of wool in the United States is approximately 650,000,000 pounds, of which 175,000,000 pounds is held by the producers. With the coming 1921 wool clip the amounts controlled by producers would be approximately 450,000,000 pounds, while the dealers would hold approximately 500,000,000 pounds. Therefore, the benefit derived from a tariff would be equally divided between producers and the dealers and manufacturers. Undoubtedly any tariff on wool would reflect in the price of finished goods and the charge passed on to the consumer.

(*d*) Wool dealers who purchased wool stocks at higher prices than now obtain are

in serious financial straits and would be directly benefited. Forced liquidation on the part of wool dealers would make the present bad situation worse and break a trade organization of value to agriculture.

(*e*) It can be shown that the price of wool is so small a factor in the ultimate cost of manufactured goods that no large burden need be placed on the consuming public. [Italics ours.]

The foregoing remarks quoted from the report which accompanied the Emergency Tariff Bill when it was committed to the Committee of the Whole House on April 13, 1921, present a very clear picture of the distressing commercial, financial, industrial, and economic conditions which prevailed at that time, and, as indicated, the Emergency Act was enacted as a temporary measure to relieve that situation. This report, in so far as it related to wool and certain other articles, was adopted without change by the Senate Finance Committee in reporting the bill to the Senate. (Senate Report No. 16, 67th Cong., 1st sess.)

At the time the above report was submitted all wool was on the free list. Not only had vast stocks of wool accumulated in this country, but the 1921 domestic wool clip was in anticipation as well as tremendous shipments from foreign countries. Congress therefore appreciated the necessity of immediate legislative action to forestall serious embarrassment to wool growers and dealers in this

country, as shown to exist in Mr. Young's report. Accordingly the Emergency Tariff Act was enacted prescribing rates of duty on "wool, commonly known as clothing wool," the only specific exemption being "such wools as are commonly known as carpet wools." This was urgent in order to avert forced liquidations, as it appears from the report that in many cases merchants and bankers who had made large commitments to sheep producers were in serious financial trouble and favored a wool tariff. As the United States is not a carpet-wool producing country, it naturally and obviously follows that the acute situation confronting merchants and bankers was created through loans on stocks of wool other than carpet wool. To relieve this situation Congress immediately enacted remedial legislation, as expressed in paragraph 18 of the Emergency Tariff Act. It would be absurd to contend, therefore, that the intent of Congress was not to protect the large body of domestic wool producers, and that intent was clearly expressed in the report which accompanied the Emergency Tariff Bill. If the importers' contention were upheld, the very purpose of the legislation would be defeated, as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade.

From the foregoing it is obvious that Congress deliberately intended to prescribe a protective rate of duty upon all wool, and hair of the camel, angora goat, and alpaca (except carpet wool and certain skin wools), which under paragraph 650 of the Act of 1913 were exempt from duty. Consequently, we find in paragraph 18 of the Emergency Act that Congress has apparently divided wools into two classes, namely *clothing wools* and *carpet wools*, specifying that the former shall be classified at 15 cents or 30 cents or 45 cents per pound, according to condition, while carpet wools should still remain on the free list.

It will be recalled that the original emergency tariff bill, H. R. 15275, which was passed by the House and Senate, was vetoed by President Wilson a few days before the end of the 66th Congress; and as the expression "wool, commonly known as clothing wool," appearing in paragraph 18 of the Emergency Tariff Act (H. R. 2435) of May 27, 1921, is in language identical to the corresponding provision in the original emergency bill, it is profitable to consider the debates and antecedent history of the original bill as well as the one which was finally enacted into law.

An examination of the Congressional Record, wherein the progress of the emergency bill in its various stages in the House and Senate is shown, clearly indicates that Congress was legislating with respect to two grand divisions of wool, namely, clothing wool and carpet wool, which

terms collectively embraced all wools. References to the Congressional Record are contained in the Appendix to this brief, page 28.

In the trial court the importers, respondents, introduced a great deal of testimony tending to establish that in trade and commerce wools commonly used in the manufacture of clothing are recognized as (1) clothing wool, and (2) combing wool; that the term "clothing wool," as above expressed, relates to the short-fibered wools which are not of sufficient length to be combed, and which are utilized in the woolen system of manufacture; that combing wools are wools of relatively long staple which are combed in the process of manufacture and used in the worsted system.

The Government contends, however, that the so-called combing wool is merely a grade or kind of clothing wool and is in fact within the common acceptation of the term known as "clothing wool."

In its opinion the lower court remarked, T. D. 40784, pp. 48, 53, No. 15, 47 Treas. Dec. — (not yet reported):

> In our former opinion we have set out various expressions used in previous tariff acts from March 2, 1867, to 1921, when Congress was referring to wool. The terms used show that the framers of the paragraphs knew the wool business and knew the meaning of the terms used. The words "clothing wools" were frequently referred to, and finally "clothing wools" were re-

ferred to as Class I. The trade understood and the administrators of the act understood what "clothing wools" were and what Class I was. They used the same words with the addition of the words "commonly known" in the Emergency Tariff, and now the Government contends that they used the words in a different sense and that, even if they did use the words "clothing wool" to describe a short-stapled wool in the many preceding acts, in the emergency tariff law they changed the meaning and used the words in a different sense.

The record demonstrates that the importations of wool here in question consist of Australian, New Zealand, and South American (Buenos Aires) wool, all of which contain Merino blood. All of these wools were in the Tariff Acts from March 2, 1867, to 1921 (whenever wool was a dutiable commodity), specifically designated in the tariff either as "Class I" or, as in the Tariff Acts of 1867 and 1883, as "Class I, Clothing."

For convenience, the provisions of the Tariff Acts of 1867 and 1883 are here set forth.

The Tariff Act of March 2, 1867, c. 197 (14 Stat. 559), reads:

CLASS 1—CLOTHING WOOL

That is to say, merino, mestiza, metz or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as

have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

The Tariff Act of March 3, 1883, c. 121 (22 Stat. 488, 508), is in identical language.

Consequently, such wools as are here under consideration had acquired a well-known designation as "clothing wools" based on blood rather than on length of staple. The apparent reason why such wools have also come to be technically known as combing wools is because of the great development in the manufacture of combing machinery by which a great many wools which years ago were more commonly utilized in the woolen system of manufacture are now well adapted for the worsted system. But whether the wools are carded or combed in being prepared for use in the manufacture of clothing, it would seem that they are properly and definitely described as clothing wools.

While it is true that the Tariff Acts of 1867 and 1883 provided for "Class I, Clothing Wool," they also provided for "Class II, Combing Wools," the latter embracing a few long-stapled wools of English blood, together with the hair of the alpaca, goat, and other like animals. As we have pointed out before, however, many wools, including Aus-

tralian, New Zealand, South American wools, and other wools of Merino blood, immediate or remote, such as are involved in this proceeding, remained under the heading "Class I, Clothing," even though they were wools of the combing grade, as shown by the record herein.

The distinctions between Class I and Class II, above referred to, were primarily *blood* distinctions, which were entirely dropped in the preparation of the Emergency Tariff Act.

It is clearly indicated in Part IV of the Hearings before the Committee on Ways and Means, House of Representatives, dated December 16, 1920, that wools of "Class I, Clothing," and "Class II, Combing," as designated in earlier tariff acts, were designed to be consolidated in the Emergency Tariff Act and provided for in the provision for "wool, commonly known as clothing wool." We quote as follows from pages 134 to 135 of the above "hearings":

> The CHAIRMAN. For the purposes of information, under the Payne and Dingley tariff laws, the duty on carpet wools was 3 or 4 cents a pound, as I remember it—3 cents, I believe—when valued at not less than 7 cents. Maybe it was a higher price than that, perhaps 15 cents. And when valued at more than 15 cents a pound, then 7 cents a pound. Those were the rates provided for in the Dingley and the Payne tariff laws. I can get it accurately for you, but that is about it. The 12 cents was the

> duty at that time on wools of the second class; your grease wools and fine wools only paid a duty of 10 cents. *Now, Mr. Green puts* both class 1 and class 2 wools at 12 cents when *in the grease*. [Italics ours.]

Reference is here made to the history of the original emergency bill (H. R. 15275), which was vetoed by the President, for the reason that the language then adopted, "wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools," was subsequently enacted into law without change (except as to rate) in paragraph 18 of the Emergency Tariff Act of May 27, 1921. The above quotation shows clearly the purpose to include all but carpet wools in the dutiable class of paragraph 18.

The reports of the Court of Customs Appeals are replete with cases in which, apparently, that court has been largely, if not in fact expressly, guided by its references to the Congressional Record, Tariff Hearings, Notes on Tariff Revision, etc., in reaching its conclusions. See, for example, *Tilge* v. *United States,* 2 Ct. Cust. Appls. 129; *United States* v. *Anderson Co.,* 2 Ct. Cust. Appls. 350, 352, 353; *Heide* v. *United States,* 2 Ct. Cust. Appls. 399, 402, 403; *American Express Co.* v. *United States,* 3 Ct. Cust. Appls, 475, 478; *Willenborg* v. *United States,* 6 Ct. Cust. Appls. 451, 454, 455; *Wright & Graham Co.* v. *United States,* 6 Ct. Cust.

Appls. 528, 529, 530, 531; *Rosenberg & Co.* v. *United States*, 7 Ct. Cust. Appls. 213.

In this Court numerous cases may be cited wherein its deliberations and conclusions seem to have been greatly aided by consideration of Congressional committee reports and the statements of chairmen of committees. See, for example, *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474.

See also *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *United States* v. *Pfitsch*, 256 U. S. 547, 550, 551; and *Carroll* v. *United States*, No. 15 of the past term of this Court (not yet reported).

As the case at bar is dealing specifically with an emergency tariff act, the attention of the Court is respectfully invited to its decisions relating to the Emergency Housing Laws, namely: *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242.

In view of the foregoing authorities it is respectfully submited that the court below in declining to give appropriate force and effect to the history of the times and other matters of judicial notice, failed to properly interpret the provisions of paragraph 18 of the Emergency Tariff Act, or to arrive at its obvious meaning and intent.

On the contrary, its conclusions would result in depriving the paragraph of the meaning intended

by its designers and render ineffective the remedy prescribed by Congress for the emergency. In so doing the court below not only departed from rules of construction followed in many earlier cases, but departed as well from principles of construction frequently followed by this Court.

V

The testimony

Furthermore, the court improperly applied the testimony introduced on behalf of the importers with respect to the commercial or technical meaning of the term "clothing wool" in arriving at its *common* meaning. It is not disputed that wool merchants, in sorting and grading fleeces, separate them into grades according to length of fiber, the short fibered wools being carded for use in the woolen system and the long fibered wools being both carded and combed for use in the worsted system; but nevertheless whether the different sorts be technically regarded as carding, clothing, or combing wools, they are in substance, in fact, and in name clothing wools within the popular conception of that term. A great deal of testimony was introduced on behalf of the Government from wool producers who have had wide experience in the great wool growing sections of the United States, and from those sources we have clear evidence of the common meaning of the term "clothing wool."

With reference to the *common* meaning of terms, note: *United States* v. *Thind*, 261 U. S. 204; *Ozawa* v. *United States*, 260 U. S. 178.

That the commercial meaning of a term used in tariff statutes will not prevail where Congress has already manifested a contrary intention is well settled. *Cadwalader* v. *Zeh*, 151 U. S. 171, 176; *Roosevelt* v. *Maxwell* (Fed. Cas. 12034), 20 Fed. Cas. 1155; *Hahn* v. *United States*, 131 Fed. 1000, affirmed on appeal without opinion in *United States* v. *Hahn*, 135 Fed. 349.

Furthermore, the provision in paragraph 18 of the Emergency Tariff Act in express terms is addressed to the *common* rather than the *commercial* meaning of the term "clothing wool."

It is submitted, therefore, that the testimony introduced in this case on behalf of the Government in aid of the common meaning of the term "clothing wool" compelled a finding by the court below that the importations in question were properly classified for duty by the collector of customs under the provision—

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

It is worthy of notice that hair of the camel, angora goat, and alpaca, as shown by the record, are long-fibered products which, like the wools here in question, are usually combed in preparing them for their ultimate use.

CONCLUSION

In view of the foregoing it is respectfully submitted that the writ herein applied for should be granted.

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CHARLES D. LAWRENCE,
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Of Counsel.

JUNE, 1925.

APPENDIX

The following references to the Congressional Record are here set forth.

Remarks in House on Bill H. R. 15275, imposing duties on certain agricultural products—Original Emergency Bill, vetoed by President Wilson (references are to the Congressional Record, vol. 60, 66th Cong., 3d sess.): Pages 594, 618 (the bill); 625 (Kinkaid), 631 (Blanton), 638 (Green), 642 (Quin), 648 (Smith, Mich.), 663 (Rainey), 664 (Fordney), 665 (Green), 3488 (Disagreement to Senate Bill), 3973 (Conference Report), 3975 (Conference Report), 3982, 4566, 4573, 4574, 4575, 4576, 4578, 4670, 4702, 4742.

Remarks in Senate, same bill: Pages 736, 738 (Smoot); 743, 1294, 1673, 2005, 2054, 2063 (Harrison); 2104, 2314 (Smoot); 2376 (Harrison); 2378 (Lodge); 3179 (Walsh); 3239, 3242 (Simmons); 3247 (Table of Comparison); 3941, 4023 (Conference Report); 4024, 4034 (Conference Report); 4039 (Reed).

Amendments in Senate: Pages 808, 1086, 1136, 1238, 1294, 1543, 1674, 1727, 2047, 2104.

Conference Report (H. Report 1359): Pages 3824, 4023.

Estimated Receipts Emergency Act: Page 648.

"Comparison of Rates" (Simmons): Page 3247.

The following references also are made to the original Emergency Bill, H. R. 15275, appearing

in the Congressional Record, Volume 60, Part I, pages 1 to 1084, 66th Congress, third session.

House: Page 625 (Kinkaid); 627 (Griffen); 631 (Blanton); 638 (Green); 642 (Quin); 648 (Smith); 663 (Rainey); 664 (Fordney); 665 (Olney); 665 (Hudspeth); 665 (Green).

Senate: Page 738 (Smoot); 738 (Harrison); 738 (Reed).

Remarks on final Emergency Bill, H. R. 2435, and comparison of duties between the Emergency Bill and the Payne-Aldrich Bill, Cong. Rec., vol. 61, p. 1289, 67th Cong., 1st sess.:

Conference Report on bill (H. R. 2435) imposing temporary duties on certain merchandise (H. Report 79): Pages 1563, 1578, 1589.

Remarks in House on House Bill (H. R. 2435) imposing temporary duties on certain merchandise: Pages 217, 252 (the bill), 268 (old bill), 272 (Minority Report), 327, 1430, 1632, 1635.

Remarks in Senate (same): Pages 910, 1018, 1066, 1097, 1098, 1122, 1148, 1149, 1172, 1244, 1253, 1288, 8436.

Statistics relative to estimated revenue, Emergency Bill: Page 1068.

Views of Minority: Page 269.

Amendment in Senate, Tariff on Wool: Page 1165.

Remarks in Senate on bill (H. R. 8643) to extend Emergency Tariff Act: Page 7538.

Statistical History of Tariff Acts from 1870 to 1920: Page 8421.

Statistics: Pages 1789, 3844.

Text of Booklet "Tariff Information, 1921": Page 3849.

Text of Emergency Act: Page 7544.

Note also the following publications:

"The Wool Growing Industry," prepared by the United States Tariff Commission, 1921, page 428.

The Report of the Tariff Board on Schedule K of the Tariff Law on "Wool and Manufactures of Wool," Vol. 1, part I, page 53, 1921. Also Vol. 2, part 2, pages 299, 382, 413.

Summary of Tariff Information, 1921, page 952.

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No. 1[illegible]

In the Supreme Court of the United States

October Term, 1[illegible]

THE UNITED STATES, PETITIONER

v.

STONE & DOUGLAS, CO. AND LEWIS, DOUGLAS & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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14785—26

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 150

THE UNITED STATES, PETITIONER

v.

STONE & DOWNER CO. AND LOWE, DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

STATEMENT

The respondents' motion to dismiss or affirm is based upon the following grounds (Resp. br. p. 2):

> 1. The Writ of Certiorari should be dismissed because the present respondents obtained a final judgment in their favor which has never been reversed nor modified, against the present petitioner in a prior suit, in which the present question was distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery and can not be disputed in this second suit between the same parties.

2. The judgment of the Court of Customs Appeals should be affirmed because its correctness is conclusively established by its prior decision upon the same question and further argument is needless and can serve no purpose other than delay.

Respondents contend that the judgment of the Court of Customs Appeals in *Stone & Downer Co. et al.* v. *United States* (No. 2245), reported in 12 Ct. Cust. Appls. 62, operates by way of estoppel under the principle of *res adjudicata* to prevent the Government from having the issue reviewed in the present suit.

ARGUMENT

I

This motion is nothing more than an effort to obtain a rehearing of the petition for certiorari and a reconsideration by the Court of its action in granting the writ.

Respondents' argument in their brief on this motion, to the effect that an earlier case involving the same parties, the same questions, and importations of precisely similar merchandise, was decided adversely to the Government, is the same argument, supported by many of the same authorities, which was presented by them in their brief (Point I) in opposition to the Government's petition for a writ of certiorari.

II

The doctrine of *res adjudicata* has no application to the case at bar. It is a universal rule, long established in customs procedure, that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts.

Stone & Downer Co. et al. v. *United States*, 4 Ct. Cust. Appls. 47.

Beuttell & Sons v. *United States*, 8 Ct. Cust. Appls. 409, 410, 411, 421.

United States v. *Rice & Fielding, Inc.*, T. D. 40979, 47 Treas. Dec. 807, at 808.

United States v. *Hurst & Co. et al.*, T. D. 41584, 49 Treas. Dec. 853, 854.

Rule XXII of the Board of United States General Appraisers, T. D. 34210, 26 Treas. Dec. 316, 324, and T. D. 37772, 35 Treas. Dec. 106, at 113.

III

Respondents have not brought themselves within the provisions of paragraph 5 of rule 6 of the revised rules of this Court, adopted June 18, 1925, effective July 1, 1925, which permit motions to affirm writs or appeals on the grounds that "it is manifest that the writ or appeal was taken for delay only," or "that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument."

CONCLUSION

The motion in all respects should be denied.

Respectfully submitted.

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OCTOBER, 1926.

○

No. 180

In the Supreme Court of the United States

October Term, 1939

THE UNITED STATES, PETITIONER

v.

SWIFT & COMPANY ET AL. AND ARMOUR & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 150

THE UNITED STATES, PETITIONER

v.

STONE & DOWNER CO. AND LOWE, DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Board of General Appraisers in a prior case presenting the same questions are found at pages 365 to 396 of the record. The Board's decision in this case is at pages 397 to 400 of the record. (T. D. 40368, G. A. 8842, 46 T. D. 142.) The opinion of the Court of Customs Appeals in the prior case is at page 409 of the record and is reported in 12 Ct. Cust. Appls. 62. The opinion in this case (R. 402) is reported in 12 Ct. Cust. Appls. 557.

JURISDICTION

The judgment of the Court of Customs Appeals was entered March 23, 1925. (R. 407.) Petition for certiorari was filed June 20, 1925, and granted October 12, 1925. (R. 408.) As there are about five thousand cases in the U. S. Customs Court involving the same question, on December 23, 1924, prior to the decision of the Court of Customs Appeals, the Attorney General filed in that court a certificate of importance. (R. 401.) Jurisdiction of this Court is found in Section 195 of the Judicial Code as amended August 22, 1914 (c. 267, 38 Stat. 703), which authorizes certiorari to review decisions of the Court of Customs Appeals if "a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court" has been filed by the Attorney General. This statute was not affected by the Act of February 13, 1925.

THE QUESTION PRESENTED

The main question presented is whether the importations of wool, which, it has not been disputed, are commonly and chiefly used in the fabrication of clothing, were properly classified and assessed for duty by the collector of customs under the provisions of paragraph 18 of the Emergency Tariff Act, *infra*, as:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

If the wool was properly classified under said paragraph 18 of the Emergency Tariff Act, it automatically follows that the yarn and cloth were subject to the additional duty provided in paragraph 19 of said act.

THE STATUTES INVOLVED

Paragraph 18 of the Emergency Tariff Act of May 27, 1921 (c. 14, 42 Stat. 9, 10), under which the wool was classified for duty:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Paragraph 650 of the Tariff Act of October 3, 1913 (c. 16, 38 Stat. 114, 164), under which the court held the merchandise was entitled to free entry:

> Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Paragraph 19 of the Emergency Tariff Act (42 Stat. 10), under which the additional duty was levied upon the wool yarn and wool cloth:

> Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

SPECIFICATION OF ERRORS

(1) The Court of Customs Appeals erred in holding that wool which is commonly and chiefly used in the manufacture of clothing is not "wool, commonly known as clothing wool," and disregarded numerous decisions of that court and of this Court in declining to give due force and effect to the history of the times and various matters of judicial notice surrounding the enactment of the Emergency Tariff Act.

(2) It disregarded rules of construction common to the interpretation of statutory law heretofore adopted and followed.

(3) It improperly applied testimony as to the *commercial* meaning of the term "clothing wool" to establish its common meaning, and failed to give due force and effect to the testimony introduced on behalf of the Government in aid of the common meaning of the term "clothing wool."

STATEMENT

Certain importations of wool, wool yarn, and wool cloth were entered at the port of Boston during the period from November 10, 1921, to July 3, 1922, and the collector of customs at that port levied duties thereon under the provisions of the Tariff Act of October 3, 1913 (c. 16, 38 Stat. 114), as amended by the provisions of the Emergency Tariff Act of May 27, 1921 (c. 14, 42 Stat. 9).

More specifically, the wool, consisting of Australian, New Zealand, and South American wool, of merino blood, was classified and duty assessed thereon at the appropriate rate provided in paragraph 18 of the Emergency Tariff Act for:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools * * *.

The wool yarn and wool cloth were classified and assessed for duty under the specific provisions

therefor in the Tariff Act of 1913, *supra*, and in addition thereto duty was levied at the rate provided in paragraph 19 of the Emergency Tariff Act on "manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value."

The importers, respondents, protested the action of the collector of customs pursuant to the provisions of paragraph N of section III of the Tariff Act of October 3, 1913 (38 Stat. 114, 187), claiming that the wool was entitled to exemption from duty under paragraph 650 of the Act of 1913 (38 Stat. 164), and that the yarn and cloth were not subject to the additional duty provided in paragraph 19 of said Emergency Tariff Act.

The Board of United States General Appraisers sustained the protests of respondents (R. 401), and on appeal to the Court of Customs Appeals the judgment of the Board of General Appraisers was affirmed (R. 407).

While the record in the case is voluminous, briefly stated it comprises a great deal of testimony introduced on behalf of respondents tending to show that the term clothing wool has a restricted meaning in the trade and commerce of the United States; that among certain classes of dealers in wool the term clothing wool is limited to short-fibered wool which is carded and used in the manufacture of woolens, whereas the term combing wool, in its technical trade sense, is applied to long-

fibered wool such as those in question, which are not only carded but combed and used in the worsted process of manufacture.

This testimony was introduced over objection of counsel for the Government who contend that inasmuch as paragraph 18 provides for wools *commonly* known as clothing wool, Congress was addressing itself to the common rather than the commercial meaning of the phrase used. The Government on the other hand introduced the testimony of many witnesses comprising wool growers and dealers in wool to show that in the common acceptation of the words "wool, commonly known as clothing wool," the importations in question clearly fail within that classification. The record further discloses that in the development of machinery employed for the manipulation of wool it is profitable in these days to comb wools of a fiber which formerly was too short for practical combing purposes; that there is no definite line of demarcation between combing and noncombing wools for the reason that whereas some mills are equipped for combing long-fibered wools only, others, equipped with more modern machinery, utilize for combing purposes short-fibered wools. Furthermore, it is shown that the production of carpet wool in the United States is negligible.

ARGUMENT

I

THE COURT OF CUSTOMS APPEALS ERRED IN HOLDING THAT WOOL WHICH IS COMMONLY AND CHIEFLY USED IN THE MANUFACTURE OF CLOTHING IS NOT "WOOL, COMMONLY KNOWN AS CLOTHING WOOL" AND DISREGARDED NUMEROUS DECISIONS OF THAT COURT AND OF THIS COURT IN DECLINING TO GIVE DUE FORCE AND EFFECT TO THE HISTORY OF THE TIMES AND VARIOUS MATTERS OF JUDICIAL NOTICE SURROUNDING THE ENACTMENT OF THE EMERGENCY TARIFF ACT

The context of paragraph 18 would seem to clearly indicate the intention of Congress to transfer from the free list of the Act of 1913 all wool except carpet wool which is the only wool expressly excluded from the terms of paragraph 18. The reason for excluding carpet wool is obviously due to the fact that the United States does not produce carpet wool to any extent and importations of it would not compete with a domestic product. Consequently the purpose of protection was accomplished by providing for the dutiable classification of "wool, commonly known as clothing wool," including hair of the camel, angora goat, and alpaca, importations of which would seriously compete with the domestic product.

If, however, upon examining the context, any doubt should survive as to the intent of Congress expressed in paragraph 18, that doubt is resolved by resort to appropriate extraneous aids.

The title of the Emergency Tariff Act of May 27, 1921 (42 Stat. 9) reads:

> An Act Imposing temporary duties upon certain agricultural products *to meet present emergencies*, and to provide revenue; to regulate commerce with foreign countries; to prevent dumping of foreign merchandise on the markets of the United States; to regulate the value of foreign money; and for other purposes. (Italics ours.)

The title of the Act expressly states that emergencies existed with respect to certain agricultural products, which invited legislation by Congress. It would seem of paramount importance, therefore, to ascertain first the evil which existed, the cause, and the remedy.

Inquiry through appropriate sources of information will readily clarify the situation. The reports of Congressional committees, statements of chairmen of such committees, and other facts of which judicial notice may be taken, clearly disclose the intent of Congress in its enactment of paragraphs 18 and 19 of the Emergency Act, *supra*. While it is a general rule of construction that the language of a statute should be construed by reference to the words employed in the context, it is equally well recognized that where the context does not afford sufficient light as to the intent of Congress, then resort may be had to extraneous aids in the process of interpretation.

United States v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318, and cases cited.

Carroll v. *United States*, 267 U. S. 132.

United States v. *Pfitsch*, 256 U. S. 547, 551.

Lambert v. *Yellowley*, No. 47, October Term, 1926, decided by this Court November 29, 1926, not yet reported.

It is obvious that respondents regarded the terms of paragraph 18 as ambiguous inasmuch as they found it desirable to introduce a mass of testimony for the purpose of establishing a restricted meaning of the term clothing wool in the trade and commerce of the United States tending to show that the meaning of the phrase "wool, commonly known as clothing wool," as used in the Emergency Act, was different from the meaning ascribed to it by witnesses who testified on behalf of the Government.

The Court of Customs Appeals reviewed the testimony in the case, consulted various authorities, and then reached the conclusion that paragraph 18 was not ambiguous. Of course, it rests with the court to determine whether a statute be ambiguous, but it would seem that its ambiguity should be apparent upon its face rather than result from a determination of that question after a review of the evidence and authorities which may be invoked.

It is an element of statutory construction that the intent of the law is the law, and in applying the various rules of construction that rule should be adopted as the master rule which will not result in absurdities or ascribe to Congress an intent not in

harmony with the purpose of the statute, which in this case was specifically designed "to meet present emergencies affecting agricultural products."

Therefore it becomes profitable and expedient to briefly trace the history of the Emergency Tariff Act under consideration.

It will be recalled that under the Tariff Act of 1913, which was amended by the Emergency Tariff Act, wool of the sheep, hair of the camel, "and other like animals," and all wools and hair on the skin of such animals, were granted freedom from duty. (Par. 650, Act of 1913, 38 Stat. 164.)

In the light of those facts, what was the object, purpose, or intent of Congress in framing paragraphs 18 and 19 of the Emergency Tariff Act and carving out of the free list "wool, commonly known as clothing wool," and expressly excepting only "wools, commonly known as carpet wools"? Reference to Congressional records and documents which disclose the history of the times immediately prior to the enactment of the Emergency Act give a complete answer to this question.

Following the close of the World War in the fall of 1918, there was a surplus of the world's stock of raw wool, and in 1920 there seems to have been a general decline in wool prices—financial stringency, industrial stagnation, and unemployment being contributing causes. Fully recognizing the principle that agriculture is the fundamental basis of prosperity in this country, Congress, in order to avoid the possible destruction of industries requir-

ing years to develop and to avert serious financial difficulties then impending, resorted to an emergency tariff as a temporary means of relief to agricultural interests pending the enactment of a permanent bill. As a result the Emergency Tariff Act was placed upon the statute books May 27, 1921. In reporting the bill (H. R. 2435) to the House of Representatives, Mr. Young, of the Committee on Ways and Means, submitted a report, from which we quote the following (H. Report No. 1, p. 2, 67th Cong., 1st sess.):

> One of the most serious obstacles to the revival of industry is the paralysis of agriculture. Title I of this bill, to protect certain farm products, is submitted to Congress for the welfare of the nation as a whole. It is not sectional. It is not for the benefit of one class, because its passage will be for the good of all. The purchasing power of *farmers* has been in large part destroyed and must be restored before good times can be hoped for.
>
> While it is true that we are in the grip of a nation-wide industrial and business depression, which has distressed many, impartial observers are of the opinion that agriculture is the hardest hit of all. In addition to abnormally low prices, and in some instances no price at all, practically everything the *farmers* buy is from 50 to 100 per cent higher than pre-war levels.
>
> The consuming public and the commercial public have an absolute and definite interest

with the *farmer* in helping him to make cost of production and a fair profit.

The primary interest of the consuming public in the *farmer* is that he keep on producing food. The *farmer* will do that only if he makes a profit on his productions. If he must sell his commodities below cost of production he must go out of business or lower his standard of living to such an extent that he is a public menace. In either event the consuming public will suffer.

At page 5 the report reads in part as follows:

The prosperity of this country is based primarily on agriculture. If the American public permits class after class of American *farmers* to be driven out of their industries by competition from one source or another, the whole country will be impoverished gradually but surely. The *farmer* will not be the only sufferer; the whole public will go down with him. This is the teaching of history.

The sooner the average man realizes that his interest is absolutely inseparable from that of the agricultural producer, the sooner will the entire country be on a more prosperous footing. (Italics ours.)

With specific reference to the subject of wool, we quote as follows from pages 7 and 8 of said report:

(1) In previous years the average production of wool in the United States was 314,000,000 pounds and average imports 203,000,000 pounds.

During the war imports increased in response to increased manufacturing to about 445,893,000 pounds in 1919, and declined to 259,618,000 pounds in 1920.

(2) Both importation and consumption of wool have decreased since May. However, there has been a large increase for January and February, 1921. Importations in recent months appear to be speculative, in anticipation of tariffs.

(3) The stocks of wool on hand were large when the price slump came last May. To the stocks on hand was added the new clip of 280,000,000 pounds.

(4) The accompanying tables show the wool supply in sight to be near 1,000,000,000 pounds. The normal consumption is about 600,000,000 pounds, with about 400,000,000 pounds carried as stock. A year's supply is in sight at normal consumption. At the present rate of consumption (about two-thirds normal) the supply would be sufficient for a year and a half.

(5) The effect of an embargo or high tariff would be to gradually increase the prices.

The justification for an emergency tariff is:

(a) A fundamental industry that it takes years to develop is facing ruin.

(b) The prosperity of large numbers of people, not sheep growers, is dependent on the sheep industry. Hence, merchants and bankers who have made large advances to

sheep producers are in serious financial trouble and favor a wool tariff.

(c) At present the supply of wool in the United States is approximately 650,000,000 pounds, of which 175,000,000 pounds is held by the producers. With the coming 1921 wool clip the amounts controlled by producers would be approximately 450,000,000 pounds while the dealers would hold approximately 500,000,000 pounds. Therefore, the benefit derived from a tariff would be equally divided between producers and the dealers and manufacturers. Undoubtedly any tariff on wool would reflect in the price of finished goods and the charge passed on to the consumer.

(d) Wool dealers who purchased wool stocks at higher prices than now obtain are in serious financial straits and would be directly benefited. Forced liquidation on the part of wool dealers would make the present bad situation worse and break a trade organization of value to agriculture.

(e) It can be shown that the price of wool is so small a factor in the ultimate cost of manufactured goods that no large burden need be placed on the consuming public. (Italics ours.)

The foregoing remarks quoted from the report which accompanied the Emergency Tariff Bill when it was committed to the Committee of the Whole House on April 13, 1921, present a very clear picture of the distressing commercial, finan-

cial, industrial, and economic conditions which prevailed at that time, with special reference to the "sheep industry," and, as indicated, the Emergency Act was enacted as a temporary measure to relieve that situation. This report, in so far as it related to wool and certain other articles, was adopted without change by the Senate Finance Committee in reporting the bill to the Senate. (Senate Report No. 16, 67th Cong., 1st sess.)

At the time the above report was submitted all wool was on the free list. Not only had vast stocks of wool accumulated in this country, as shown by the report, but the 1921 domestic wool clip was in anticipation as well as tremendous shipments from foreign countries. Congress therefore appreciated the necessity of immediate legislative action to forestall serious embarrassment to wool growers and dealers in this country, as shown to exist in Mr. Young's report. Accordingly the Emergency Tariff Act was enacted prescribing rates of duty on "wool, commonly known as clothing wool," the only specific exemption being "such wools as are commonly known as carpet wools." This was urgent in order to avert forced liquidations, as it appears from the report that in many cases merchants and bankers who had made large commitments to sheep producers were in serious financial trouble and favored a wool tariff to preserve the sheep industry from destruction. As the United States is not a carpet-wool producing country, it naturally and obviously

follows that the acute situation confronting merchants and bankers was created through loans on stocks of wool other than carpet wool. To relieve this situation Congress immediately enacted remedial legislation, as expressed in paragraph 18 of the Emergency Tariff Act. It would be absurd to contend, therefore, that the intent of Congress was not to protect all domestic wool producers, and that intent was clearly expressed in the report which accompanied the Emergency Tariff Bill. If the importers' contention were upheld, the very purpose of the legislation would be defeated, as it would result in leaving a large body of domestic producers of long staple wool unprotected.

From the foregoing it is obvious that Congress deliberately intended to prescribe a protective rate of duty upon all wool, and hair of the camel, angora goat, and alpaca (except carpet wool and certain skin wools), which latter are not classifiable as wools. (*United States* v. *Davies Co.*, 11 Ct. Cust. Appls. 392, 396.) Consequently, we find in paragraph 18 of the Emergency Act that Congress has apparently divided wools into two classes, namely, *clothing wools* and *carpet wools*, specifying that the former shall be classified at 15 cents or 30 cents or 45 cents per pound, according to condition, while carpet wools should still remain on the free list.

It will be recalled that the original emergency tariff bill, H. R. 15275, which was passed by the House and Senate, was vetoed by President Wilson a few days before the end of the 66th Congress; and

as the expression "wool, commonly known as clothing wool" appearing in paragraph 18 of the Emergency Tariff Act (H. R. 2435) of May 27, 1921, is in language identical to the corresponding provision in the original emergency bill, it is profitable to consider the debates and antecedent history of the original bill as well as the one which was finally enacted into law.

An examination of the Congressional Record, together with the committee report above quoted, wherein the progress of the emergency bill in its various stages in the House and Senate is shown, clearly indicates that Congress was legislating with respect to two grand divisions of wool, namely, clothing wool and carpet wool, which terms collectively embraced all wools. Consequently the term clothing wool, as employed in paragraph 18, was designed to include the wool in question. References to the Congressional Record and other documents, are contained in the Appendix to this brief, page 30.

II

THE COURT OF CUSTOMS APPEALS DISREGARDED RULES OF CONSTRUCTION COMMON TO THE INTERPRETATION OF STATUTORY LAW HERETOFORE ADOPTED AND FOLLOWED

Under Point I we have endeavored to present the situation which existed at the time of the enactment of the Emergency Tariff Act and have referred to the debates in Congress and the reports on which the legislation was based, which clearly show

the emergency existing in the wool industry, and which the Emergency Tariff Act was intended to relieve.

All of this documentary proof appears to have been rejected by the court as an aid to its interpretation of the language of the paragraph here in question, contrary both to the decisions of the United States Court of Customs Appeals and also to the decisions of this Court.

The reports of the United States Court of Customs Appeals are replete with cases in which apparently it has been largely, if not in fact expressly, guided by its references to the Congressional Record, Tariff Hearings, Notes on Tariff Revision, etc., in reaching its conclusions, notably:

Tilge v. *United States*, 2 Ct. Cust. Appls. 129.

United States v. *Anderson*, 2 Ct. Cust. Appls. 350, 352, 353.

Rosenberg v. *United States*, 7 Ct. Cust. Appls. 213.

Heide v. *United States*, 2 Ct. Cust. Appls. 399, 402, 403.

United States v. *Wakem*, 2 Ct. Cust. Appls. 411, 419.

American Express Co. v. *United States*, 3 Ct. Cust. Appls. 475, 478.

Willenborg v. *United States*, 6 Ct. Cust. Appls. 451, 454, 455.

Wright & Graham Co. v. *United States*, 6 Ct. Cust. Appls. 528, 529, 530, 531.

Note also *Shallus* v. *United States*, 162 Fed. 653, 655, 656.

These aids to the interpretation of statutes have been recognized by this Court in numerous cases.

United States v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318, and cases cited.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Carroll v. *United States*, 267 U. S. 132.

Lambert v. *Yellowley*, No. 47, October term, 1926, Supreme Court of the United States, not yet reported.

In the recent and important cases considered by this Court on the validity of the Emergency Housing Laws of the State of New York and the District of Columbia, the situation which confronted the legislature at the time of the enactment of those laws was thoroughly considered by this Court in its determination as to the constitutionality of the measures there involved, and held "*that the emergency declared by the statute did exist must be assumed* * * *." (Italics ours.) *Block* v. *Hirsh*, 256 U. S. 135, 154.

See also:

Marcus Brown Co. v. *Feldman*, 256 U. S. 170.

Levy Leasing Co. v. *Siegel*, 258 U. S. 242.

A disregard, by the court below, of the rules of construction applied in these cases is of vital importance in this case as the lower court based its opinion (R. 402) on the fact that the statute sought to be interpreted was free from ambiguity, and that extraneous aids such as the official reports above referred to, could not be permitted to override the

plain and unambiguous meaning of the words as used in the Act. Its failure to give due consideration to these official documents resulted in their giving an interpretation to the Emergency Tariff Act which did not carry out the intention of Congress at the time it was enacted into law, in that it excluded from its protection a class of wool which it was conceded was produced in large quantities in this country at the time of its enactment. In other words, the court below failed to give due consideration to the emergency which it must be assumed existed.

III

THE COURT BELOW ERRED IN THAT IT APPLIED TESTIMONY AS TO THE COMMERCIAL MEANING OF THE TERM CLOTHING WOOL TO ESTABLISH ITS COMMON MEANING, AND FAILED TO GIVE DUE FORCE AND EFFECT TO THE TESTIMONY INTRODUCED ON BEHALF OF THE GOVERNMENT IN AID OF THE COMMON MEANING OF THE TERM "CLOTHING WOOL"

While the Government was opposed to the introduction of the oral testimony introduced by respondents to establish a restricted trade meaning of the term clothing wool upon the ground that the context of paragraph 18 was apparent, when read in the light of matters of public history surrounding the Emergency Tariff Act, of which judicial notice could be taken, it nevertheless felt impelled to rebut such oral testimony with other testimony tending to establish a broader and more popular

meaning of the term clothing wool which would include the wool in question, and more completely effectuate the policy of Congress declared in the Emergency Act. Marvel as 4 U. S. 116 & U. S. 11

Furthermore, as stated by this Court in *Robertson* v. *Salomon*, 130 U. S. 412, at page 415:

> But if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation.

The court below, in its opinion (R. 402) apparently took the position that the words "commonly known as clothing wool" in paragraph 18 of the Emergency Tariff Act, are free from ambiguity and should be given their ordinary meaning, without giving due force to the history of the wool schedules and the circumstances surrounding the passage of the Emergency Act.

It is not disputed that wool merchants in sorting and grading fleeces separate them into grades according to length of fiber, the short-fibered wools being carded for use in the woolen system, and the long-fibered wools being both carded and combed for use in the worsted system. These grades are commercially known as combing and clothing, respectively. Nevertheless they are in fact and in truth both clothing wools, it being conceded that they are chiefly used in the manufacture of clothing.

It is significant, as shown by the record in this case, that the importations in question consist of Australian, New Zealand, and South American

wool of merino blood. All of these wools were enumerated in the Tariff Acts from March 2, 1867, to 1921 (whenever wool was a dutiable commodity), and specifically designated either as "Class I," or as in the Tariff Acts of 1867 and 1883, as "Class I, Clothing."

For convenience, the pertinent provision of the Tariff Act of 1867 (c. 197, 14 Stat. 559) is here set forth.

CLASS 1. CLOTHING WOOL

> That is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

The Tariff Act of March 3, 1883 (c. 121, 22 Stat. 488, 508), is in identical language.

Consequently, such wools as are here under consideration had acquired a well-known designation as "clothing wools" based on blood distinction rather than on length of staple. The apparent reason why such wools have also come to be technically known as combing wools is because of the great development in the manufacture of combing

And at page 448 the following statement appears:

> The distinction between "clothing" and "combing" wools largely lost its significance about 50 years ago with the invention of machines which could be used to comb fine Merino wool of about 2½ inches in length, making it available for use in the manufacture of worsted yarns. The term "carpet" wools also became something of a misnomer with the increasing use of the better sorts of wool from "native" Asiatic and other unimproved sheep for mixing with the higher grades of wool in making yarns to be used for purposes other than carpet manufacture. Furthermore, where low cross-bred wool is cheap it is utilized to some extent for this purpose. With the passing of these distinctions the division under Schedule K became, in 1890, merely "Class I," "Class II," and "Class III," instead of "Class I, Clothing Wool," "Class II, Combing Wool," and "Class III, Carpet Wool." *In Class I remained, however, all wool from sheep having a trace of Merino blood.* In Class II was placed all wool from sheep of the English breeds, and in Class III the great variety of wools from "native" sheep of Russia, Asia, and other parts of the world. This was the classification in the tariff acts, with the exception of the act of 1894, until wool was placed on the free list in 1913. (Italics ours.)

See also Report of the Tariff Commission on "The Wool Growing Industry," 1921, pages 25, 26.

The foregoing references are in harmony with the evidence of Government witnesses who testified that the common meaning of the term clothing wool was much broader than its restricted trade or commercial meaning and included all wools used generally in the manufacture of clothing. The fact that the hair of the camel, angora goat, and alpaca, which as shown by the record are long-staple products and usually combed in preparation for their ultimate use, are included in the class of wool commonly known as clothing wool, is most significant.

It is submitted, therefore, that the foregoing considerations lead irresistibly to the conclusion that it was the intent of Congress in paragraph 18 of the Emergency Tariff Act to provide a dutiable classification for all wool except carpet wool. Hence, even if it were established that the term "clothing wool" had a restricted or commercial trade meaning it will not prevail if Congress has manifested a contrary intention.

> *Cadwalader* v. *Zeh*, 151 U. S. 171.
>
> *Roosevelt* v. *Maxwell*, 20 Fed. Cas. 1155.
>
> *Hahn* v. *United States*, 131 Fed. 1000, affirmed without opinion, 135 Fed. 349.
>
> It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with

the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. (*Ozawa* v. *United States*, 260 U. S. 178, 194.)

See also *United States* v. *Thind*, 261 U. S. 204, 209.

IV

THE QUESTIONS ARE NOT RES ADJUDICATA

The doctrine of *res adjudicata* has no application to the case at bar. It is a universal rule, long established in customs procedure, that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts.

Stone & Downer Co. et al. v. *United States*, 4 Ct. Cust. Appls. 47.

Beuttell & Sons v. *United States*, 8 Ct. Cust. Appls. 409, 410, 411, 421.

United States v. *Rice & Fielding, Inc.*, T. D. 40979, 47 Treas. Dec. 807, at 808.

United States v. *Hurst & Co.*, T. D. 41584, 49 Treas. Dec. 853, 854.

Rule XXII of the Board of United States General Appraisers, T. D. 34210, 26 Treas. Dec. 316, 324, and T. D. 37772, 35 Treas. Dec. 106, at 113.

CONCLUSION

The judgment of the United States Court of Customs Appeals should be reversed.

Respectfully submitted.

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JANUARY, 1927.

APPENDIX

The following references to the Congressional Record are here set forth:

Remarks in House on Bill H. R. 15275, imposing duties on certain agricultural products—Original Emergency Bill, vetoed by President Wilson (references are to the Congressional Record, vol. 60, 66th Cong., 3d sess.): Pages 594, 618 (the bill), 625 (Kinkaid), 631 (Blanton), 638 (Green), 642 (Quin), 648 (Smith, Mich.), 663 (Rainey), 664 (Fordney), 665 (Green), 3488 (Disagreement to Senate Bill), 3973 (Conference Report), 3975 (Conference Report), 3982, 4566, 4573, 4574, 4575, 4576, 4578, 4670, 4702, 4742.

Remarks in Senate, same bill: Pages 736, 738 (Smoot), 743, 1294, 1673, 2005, 2054, 2063 (Harrison), 2104, 2314 (Smoot), 2376 (Harrison), 2378 (Lodge), 3179 (Walsh), 3239, 3242 (Simmons), 3247 (Table of Comparison), 3941, 4023 (Conference Report), 4024, 4034 (Conference Report), 4039 (Reed).

Amendments in Senate: Pages 808, 1086, 1136, 1238, 1294, 1543, 1674, 1727, 2047, 2104.

Conference Report (H. Report 1359): Pages 3824, 4023.

Estimated Receipts Emergency Act: Page 648.

"Comparison of Rates" (Simmons): Page 3247.

The following references also are made to the original Emergency Bill, H. R. 15275, appearing in the Congressional Record, Volume 60, Part I, pages 1 to 1084, 66th Congress, third session.

House: Page 625 (Kinkaid); 627 (Griffin); 631 (Blanton); 638 (Green); 642 (Quin); 648 (Smith); 663 (Rainey); 664 (Fordney); 665 (Olney); 665 (Hudspeth); 665 (Green).

Senate: Page 738 (Smoot); 738 (Harrison); 738 (Reed).

Remarks on final Emergency Bill, H. R. 2435, and comparison of duties between the Emergency Bill and the Payne-Aldrich Bill, Cong. Rec., vol. 61, p. 1289, 67th Cong., 1st sess.:

Conference Report on bill (H. R. 2435) imposing temporary duties on certain merchandise (H. Report 79): Pages 1563, 1578, 1589.

Remarks in House on House Bill (H. R. 2435) imposing temporary duties on certain merchandise: Pages 217, 252 (the bill), 268 (old bill), 272 (Minority Report), 327, 1430, 1632, 1635.

Remarks in Senate (same): Pages 910, 1018, 1066, 1097, 1098, 1122, 1148, 1149, 1172, 1244, 1253, 1288, 8436.

Statistics relative to estimated revenue, Emergency Bill: Page 1068.

Views of Minority: Page 269.

Amendment in Senate, Tariff on Wool: Page 1165.

Remarks in Senate on bill (H. R. 8643) to extend Emergency Tariff Act: Page 7538.

Statistical History of Tariff Acts from 1870 to 1920: Page 8421.

Statistics: Pages 1789, 3844.

Text of Booklet "Tariff Information, 1921": Page 3849.

Text of Emergency Act: Page 7544.

Note also the following publications:

"The Wool Growing Industry," prepared by the United States Tariff Commission, 1921, page 428.

The Report of the Tariff Board on Schedule K of the Tariff Law on "Wool and Manufactures of Wool," Vol. 1, part 1, page 53, 1921. Also Vol. 2, part 2, pages 299, 382, 413.

Summary of Tariff Information, 1921, page 952.

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Statistical Bulletin No 3 U. S. Dept of Agriculture and Statistical Abstract of the U. S. Dept of Commerce, re import duties, production and consumption of wool, years 1918-19

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

THE UNITED STATES, PETITIONER

v.

STONE & DOWNER CO., *et al.*

No. [redacted] 150

Brief for Respondents in Opposition to Granting a Writ of Certiorari to the United States Court of Customs Appeals

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

THE UNITED STATES, Petitioner, *v.* STONE & DOWNER CO., *et al.*	No. 558.

BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

Opinions in the Court Below.

The opinion of the Court of Customs Appeals in this case is printed in the record (R., 412-418) also reported in Treasury Decision No. 40784.

The opinion of the same Court in an earlier suit (No. 2245), involving the same questions between the same parties is reported in *Stone & Downer* v. *United States*, 45 Treas. Dec., 167; T. D. 40019. [Also printed in Appendix hereto, pp. 47-75.]

Statutes Involved.

Section 195 of the Judicial Code, as amended August 22, 1914, c. 267, 38 Stat., 703, under which the petitioner

has filed the present petition is printed at page 45 of the Appendix hereto.

Paragraphs 18 and 19 of the Emergency Tariff Act of May 27, 1921 (42 Stat., 9, 10) and paragraph 650 of the Tariff Act of October 3, 1913 (38 Stat., 114, 164) are printed at pages 4 and 5 of the petition and at pages 16, 17 of the Appendix hereto.

Statement

The judgment of the United States Court of Customs Appeals which the above named petitioner prays to have reviewed by this Court on writ of certiorari, did not decide a new question. An earlier case involving the same parties, the same questions and importations of precisely similar merchandise, was decided adverse to the Government in an unanimous decision by the Court of Customs Appeals on November 17, 1923 in Suit 2245.

(*Stone & Downer* v. *United States*, 45 Treasury Decisions, 167; T. D. 40019.)

The certificate of importance authorized by Section 195, of the Judicial Code, as amended (38 Stat., 703), was not filed by the Attorney General in the earlier case, and no application was there made for a writ of certiorari.

At the trial of the present case it was agreed between counsel that the record in the earlier case (Suit 2245) including the exhibits, should be made part of the present record. The record and exhibits were accordingly admitted (R., 23, 412) and the earlier record is reprinted in the present record (R., 97-405).

It was also agreed between counsel that the wool, yarn and cloth covered by the present case is in every essential

and material respect the same as Exhibits 1 to 12, 14 and 15 passed upon in the earlier case (R., 23, 412).

Petitioner, at page 7 of his brief in support of the petition, refers briefly to the earlier case decided in Suit 2245.

Respondent feels that a more complete statement of the case should be made than is contained in the petition and brief in support thereof, and accordingly sets forth, somewhat in detail, the following history of the present litigation as shown in the record:

Paragraph 650 of the Tariff Act of 1913 (38 Stat., 164) placed upon the free list all "wool of the sheep." Manufactures of wool, however, were classified for duty according to the nature of the articles.

On May 27th, 1921, Congress passed the Emergency Tariff Act (42 Stat., 9).

The Emergency Tariff Act did not repeal the Tariff Act of 1913. It merely modified it *pro tempore* in certain particulars only, leaving in full effect the unchanged provisions of the earlier act.

> *United States* v. *Davies* (11 Ct. Cust. Appls., 392. 396).

The latter assertion is not disputed in the present litigation.

Paragraph 18 of the Emergency Act (42 Stat., 10) modified paragraph 650 of the Act of 1913 by placing a temporary duty on one class of sheep's wool, namely "wool commonly known as clothing wool," leaving all other classes of sheep's wool free under the general provision in paragraph 650 of the 1913 act for "wool of the sheep."

Paragraph 19 of the Emergency Act (42 Stat., 10) placed temporary duties (in addition to those specified in the

Act of 1913) on manufactures in chief value of the wool named in paragraph 18, that is, manufactures composed in chief value of clothing wool.

Paragraphs 18 and 19 also placed duties on the hair of various named animals, other than sheep, and manufactures thereof, but the present litigation deals only with wool of the sheep and manufactures of such wool.

On September 21, 1922, the Act of 1913 and the Emergency Tariff Act were both repealed by Sec. 643 of the Tariff Act of 1922 (42 Stat., 858, 990). The Act of 1922 contains no provision that could be affected by the determination of the present question.

When the Emergency Act was passed, the Collector of Customs at the port of Boston classified importations of certain long staple wool known as combing wool in paragraph 18 of the Emergency Act in the provision for "wool, commonly known as clothing wool."

He also assessed the additional duties prescribed in paragraph 19 on manufactures of combing wool.

Certain importers, including the present respondents, filed protests against the Collector's action in the case of each entry, claiming that the Collector erred in applying the provisions of paragraphs 18 and 19 of the Emergency Act to the wool and manufactures in question, and claimed further that the wool was entitled to free entry under paragraph 650 of the Act of 1913, and that the manufactures were subject only to the duties prescribed in the Act of 1913.

In accordance with the provisions of the Customs Administrative Act then in force (paragraph N, Section III, Act of 1913 [38 Stat., 114, 187]), the protests were forwarded to the Board of United States General Appraisers for hearing.

A large number of protests were called for hearing before the Board on September 21, 1922 (R., 122). By agreement between counsel, seven protests covering importations of wool, cloth and yarn were selected to make a test case (R., 123). The protests selected were those of Stone & Downer Co., Lowe, Donald & Co., John A. Conkey and J. A. Karnheim (R., 122). Samples of the wool, cloth and yarn were introduced and numbered Exhibits 1 to 15 (R., 124-128).

The proceedings before the Board of General Appraisers lasted five days. Nineteen witnesses were examined, among whom were purchasers, sellers, appraisers, sorters, importers, exporters, and classifiers of wool. Eight of these witnesses were called by the protestants and eleven by the Government. Their testimony is in the present record (R., 126-374).

The Board of General Appraisers, on February 20, 1923 (McClelland, G. A. dissenting), overruled the protests and sustained the Collector's classification (R., 374-405).

Thereafter the protestants in accordance with the provisions of Section 198 of the Judicial Code (36 Stat. 1146) appealed from the Board's decision to the Court of Customs Appeals, in Suit No. 2245 (R., 97, 98, 99).

The Court of Customs Appeals on November 17, 1923, in an unanimous decision of its five judges reversed the decision of the Board of General Appraisers and sustained protestants' claims.

The Court in its opinion, speaking through Judge Bland, held specifically that "clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on the date of entry, was on the free list of the Act of 1913. The

protests should have been sustained. The judgment of the Board of General Appraisers is *reversed.*"

(*Stone & Downer* v. *United States,* Suit 2245, 45 Treas. Dec., 167, 183.) (Also Appendix hereto, p. 75.)

Thereafter the Government petitioned the Court of Customs Appeals for a rehearing. One of the grounds urged for the rehearing was that the Court's decision reversing the Board, included Exhibit 13, one of the samples of wool, although the great preponderance of evidence was to the effect that that particular exhibit was a "clothing wool" rather than a "combing wool," and that the importers had so conceded in their brief.

In replying to this particular ground for rehearing, the importers conceded that Exhibit 13 was a clothing wool but took the position that the opinion did not hold to the contrary.

The Court denied the petition for a rehearing and through Judge Bland wrote a short opinion in which it was pointed out that while the original opinion was sufficiently clear to indicate how Exhibit 13 should be classified, but to obviate any doubt, specifically found that Exhibit 13 was in fact clothing wool and modified the original judgment by specifically affirming the Board of General Appraisers as to the merchandise represented by Exhibit 13. The original judgment was affirmed as to the merchandise represented by Exhibits 1 to 12, 14 and 15 (45 Treas. Dec., 183). (Appendix hereto, p. 75.)

The certificate of importance provided for in Section 195 of the Judicial Code had not been filed and no petition for certiorari was made. The judgment of the Court of Customs Appeals therefore under the same section of

the Code became final and in due course was made effective.

In order to avoid confusion we shall hereafter refer to the above case as Suit 2245.

After Suit 2245 was decided by the Court of Customs Appeals, two of the parties, namely Stone & Downer Co. and Lowe, Donald & Co., on May 28, 1924, submitted to the Board of General Appraisers, five protests covering subsequent importations of the same character of merchandise as that passed upon in Suit 2245 (R., 22). These protests had been on the suspended files of the Board awaiting the outcome of Suit 2245.

It should be noted here that the only instrument in the nature of a pleading permitted by the customs procedure is the document known as the protest. The present protests could not be amended so as to formally plead the decision in Suit 2245. The Tariff Act of 1922, Sec. 514 (42 Stat., 858, 970), permitting amendments to protests is not applicable to protests covering importations made prior to September 21, 1922 (*Woolworth* v. *United States*, 12 Ct. Cust. Appls., ; T. D. 41037).

When the five protests were called, however, it was agreed between counsel that the record in Suit 2245 should be made part of the record and that the Exhibits 1 to 12, 14 and 15 in Suit 2245, should be accepted as representing the merchandise in the importations covered by the five protests in question (R., 23).

The identity of the merchandise with that in the earlier case was conceded by Government counsel in the following statement by Mr. Lawrence, special attorney for the United States (R., 23):

> "Mr. Lawrence: That is agreed to, we having submitted the invoices to the appraiser at Boston,

who confirms the identity of the merchandise under protest with that in Suit 2245."

The record in Suit 2245 was accepted in evidence and marked Exhibit I. It is printed in the present record (R., 97-405).

The importers rested upon the record so made (R., 23).

The Government then introduced the testimony of five witnesses who had not testified in Suit 2245. The importers introduced the testimony of one witness in rebuttal. The testimony of these witnesses is printed in the present record (R., 24-97).

The Board of General Appraisers on September 10, 1924, in an unanimous decision, sustained the protests on the authority of the decision of the Court of Customs Appeals in Suit 2245. The Board wrote three short concurring opinions in which it was held that the issue was identical with that decided in Suit 2245, and that the additional testimony did not "change the facts" (R., 406-410).

Thereafter the Secretary of the Treasury, by virtue of the authority conferred upon him by Section 198 of the Judicial Code, adopted March 3, 1911, applied to the Court of Customs Appeals for a review of the Board's decision. The application is printed in the record (R., 1).

Thereafter, on December 23, 1924, the Attorney General filed a certificate under Section 195 of the Judicial Code, that the case was of such importance as to render expedient its review by the Supreme Court of the United States (R., 411).

Thereafter, on March 23, 1925, the Court of Customs Appeals in an unanimous decision of its five judges, one

of whom was not a member of the Court when the earlier case was decided, affirmed the judgment of the Board of General Appraisers, on the authority of the earlier Stone & Downer case, Suit 2215, (R., 112-117).

In its opinion, speaking through Judge Bland, the Court held that

> "Exactly the same questions are here involved as were before the Court in the Stone & Downer case, *supra*" (R., 112).

In referring to the additional testimony introduced before the Board, the opinion held that it threw no new light on the case but confirmed the views expressed in the former opinion (R., 112).

In June, 1925, the Solicitor General of the United States filed the present petition to this Court praying that a writ of certiorari issue to review the judgment of the United States Court of Customs Appeals rendered March 23, 1925.

It might be well to note here that while the case involves the classification of wool, yarn and cloth, yet as pointed out by petitioner at page 3 of the petition, the classification of the yarn and cloth depends automatically upon the classification of the wool.

The fundamental issue therefore before the Court of Customs Appeals in the present case and in the earlier case may be narrowed to the single question: Should the wool represented by Exhibits 1 to 12 be classified in Paragraph 18 of the Emergency Act as "wool, commonly known as clothing wool"?

The Court of Customs Appeals in two unanimous decisions, the first one decided nearly two years ago, has held that these same Exhibits, 1 to 12, are in fact "combing wool" and that "combing wool" and "clothing wool"

are separate, distinct and different classes of wool, and that "clothing wool" does not embrace "combing wool."

These conclusions were based upon the testimony of 25 experienced wool men from widely different branches of the wool industry, upon definitions in dictionaries and encyclopedias, upon official publications of the different departments of the Government, and upon distinctions contained in prior tariff acts.

Now, nearly two years after the very question was finally decided by the Appellate Court having exclusive appellate jurisdiction over this class of cases, more than three years after the provisions of law involved have been repealed, the Government seeks to obtain a review by this Court on certiorari of a second suit between the same parties and involving the same questions.

The respondents submit the following argument in opposition to the writ prayed for.

Summary of Respondent's Argument with Page References to the Argument.

The decision below followed an earlier unreversed and unmodified decision of the same Court between the same parties, in which the same questions were distinctly put in issue and directly determined. The questions must, therefore, as between the present parties, be taken as conclusively determined (pp. 17, 18).

> *United States* v. *Moser*, 266 U. S., 236 [ad. sheets];
> *Southern Pacific R. R. Co.* v. *United States*, 168 U. S., 1, 48;
> *New Orleans* v. *Citizens' Bank*, 167 U. S., 371;
> *Baldwin* v. *Maryland*, 179 U. S., 220, 222;
> *Deposit Bank* v. *Frankfort*, 191 U. S., 499, 513;
> *Citizens' Bank* v. *Parker*, 192 U. S., 73, 77;

Fayerweather v. *Ritch*, 195 U. S., 276, 301;
Gunter v. *Atlantic Coast Line*, 200 U. S., 273, 291;
Berryman v. *Whitman College*, 222 U. S., 334, 346.
Cromwell v. *County of Sac.*, 94 U. S., 351, 352-353.

The requirement in Section 195 of the Judicial Code (as amended August 22, 1914, c. 267, 38 Stat., 703), that the certificate of importance must be filed "before the decision of the Court of Customs Appeals is rendered" would be virtually nullified if this Court, by granting the writ in a second suit, should thus sanction a proceeding whereby the Government could, after an adverse decision, avoid the said requirement by filing the certificate and petition in a second suit involving the identical questions decided in the first suit (pp. 19-21).

The purpose of certiorari is not merely to give the defeated party another hearing (p. 21).

Magnum Co. v. *Coty*, 262 U. S., 159, 163.

Even in the absence of a technical estoppel, this case presents no reason for granting the application for writ of certiorari (p. 21).

Petitioner's assertion as to the amount of refunds involved in the present case and in cases dependent upon its outcome is based upon a misapprehension of the facts (pp. 22, 23).

Although the Court below has definitely held that the statute is clear and unambiguous, and although the petitioner himself, neither in his petition nor brief, has averred to the contrary, yet he seeks a construction and enlargement of the statute inconsistent with its plain terms and in the event of the writ being issued, frankly

proposes to submit to this Court the individual views and motives of members of Congress expressed in debate and in Committee meetings and other data gathered from legislative history which has repeatedly been held to be inadmissible for that purpose (pp. 23, 24).

Duplex Printing Press Co. v. *Deering*, 254 U. S., 443, 474;
Pennsylvania R. R. Co. v. *International Coal Mining Co.*, 230 U. S., 184, 199;
McKenzie v. *Hare*, 239 U. S., 299, 308.

Petitioner's contention, as expressed at page 17 of his brief, that the assessment of the tax on clothing wool and not on combing wool would constitute a discrimination against the growers of combing wool in favor of the growers of clothing wool, even if correct as to the facts, would not justify the Court in interpolating the words "combing wool" into the statute (pp. 25, 29).

Chung Fook v. *White*, 264 U. S., 443.

The Court is not concerned with reasons for a distinction in a tariff act; it is enough that Congress made it (p. 30).

United States v. *Citroen*, 223 U. S., 407, 415.

The political motives which induce the Legislature to select objects of revenue and tax them under particular circumstances are not for judicial consideration (pp. 30, 31).

Pennington v. *Coxe*, 2 Cranch., 33, 59.

The wording of the law cannot be changed to give effect to the law which may be supposed to have been designed by the Legislature. It is not for the Court to

say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions (p. 31).

Bates Refrigerating Co. v. *Sultzburger*, 157 U. S., 1, 37.

In the interpretation of taxing statutes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specially pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the taxpayer (pp. 31, 33).

Gould v. *Gould*, 245 U. S., 151, 153;
United States v. *Merriam*, 263 U. S., 179, 187, 188;
Eidman v. *Martinez*, 184 U. S., 578, 583.

Even if the present question were one of doubt, the doubt would be resolved in favor of the importer, "as duties are never imposed on the citizen upon vague or doubtful interpretations" (p. 33).

American Net & Twine Co. v. *Worthington*, 141 U. S., 468;
Benziger v. *United States*, 192 U. S., 38, 55;
Hartranft v. *Wiegmann*, 121 U. S., 609, 616.

In reaching its conclusions in Suit 2245 and in the present suit, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right (p. 33).

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined

in the dictionaries, encyclopedias and publications of the federal government including the Tariff Commission and the Department of Agriculture. The Court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by the witnesses, all of whom had wide experience either as purchasers, sellers, appraisers, sorters, importers, exporters or classifiers. All these sources united in one common meaning for the term "clothing wool." All excluded "combing wool" from the scope and meaning of the term. There was no competition between a common meaning and a commercial meaning; both were found to be the same; which merely established as a fact what had already existed as a presumption (pp. 24, 34, 35).

The language of a tariff act will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown (p. 37).

Swan v. *Arthur*, 103 U. S., 597.

While the Court did not rely solely upon the definition of the term "clothing wool" as understood by commercial witnesses, yet there was ample authority for the Court to give due consideration to the testimony of such witnesses.

The words of a tariff act are to be taken in the sense in which they will be naturally understood by those to whom they are addressed (p. 38).

Hedden v. *Richards*, 149 U. S., 346, 349.

Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce (p. 38).

Elliott v. *Swartwout*, 35 U. S. (10 Pet.), 137, 151.

The object of duty laws is to raise revenue, and for

this purpose, to class substances according to the general usage and known denomination of trade (p. 38).

Re Two hundred chests of Tea, 9 Wheat, 438.

In view of the commonly accepted use and meaning for the term "clothing wool," the Court could not do otherwise than hold that the provision for "wool, commonly known as clothing wool" was clear and unambiguous.

The fact that the term was clearly defined in official publications of the federal government not intended for scholars or scientific men but to give to Congress and to the people the best knowledge the compilers can would in itself remove any doubt as to what Congress understood to be the scope and meaning of the term,—a scope and meaning which is fully verified by the definitions of the lexicographers (pp. 24-25, 35-36).

United States v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, 112;

Merck v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35.

None of the six words in the provision is new to tariff legislation. The words "commonly known as" have appeared in former tariff acts in connection with other commodities and have not required a resort to construction nor a departure from the meaning given to the term in connection with which the phrase was used, by members of the trade (p. 39).

Tiffany v. *United States*, 131 Fed., 398.

The synonymous phrase "usually known" has been used in six prior tariff acts in connection with combing wool and this Court has held that the provision was clear and

unambiguous and that no wools except combing wools were included therein (pp. 39, 41).

Cooper v. *Dobson*, 157 U. S., 148, 153.

Petitioner has attempted to create impressive issues of statutory construction that have no bearing upon the real question at issue. The sole question here is whether the wool at bar should be classified as wool, commonly known as clothing wool,—an ordinary customs case,—with the usual issue (p. 42).

Most of the cases where writs have been issued to the Court of Customs Appeals have had nothing to do with the classification of merchandise but have involved treaty, jurisdictional and other important questions (p. 43).

The Five Per Cent. Discount Cases, 243 U. S., 97;
Nicholas v. *United States*, 249 U. S., 34;
Vitelli v. *United States*, 250 U. S., 355;
United States v. *Aetna Explosives Co.*, 256 U. S., 402;
United States v. *Rice*, 257 U. S., 536;
United States v. *Fish*, 266 U. S., 598 (ad sheets).

It was clearly not the purpose of the Judicial Code to have presented to this Court the question as to how a shipment of wool should be classified (p. 44).

In ordinary patent cases this Court has held that it would not grant applications for certiorari unless it be necessary to reconcile decisions of Circuit Courts of Appeals on the same patent.

Keller v. *Adams Campbell Co.*, 264 U. S., 314;
Layne Bowler Corp. v. *Western Well Works*, 261 U. S., 387.

ARGUMENT.

I.

The decision below followed an earlier unreversed and unmodified decision of the same Court in a suit between the same parties, in which the same questions were distinctly put in issue and directly determined. The question must, therefore, as between the present parties, be taken as conclusively determined.

United States v. *Moser*, 266 U. S., 236 (Advance Sheets Official Reports);
Southern Pacific R. R. Co. v. *United States*, 168 U. S., 1, 48;
New Orleans v. *Citizens' Bank*, 167 U. S., 371;
Baldwin v. *Maryland*, 179 U. S., 220, 222;
Deposit Bank v. *Frankfort*, 191 U. S., 499, 513;
Citizens' Bank v. *Parker*, 192 U. S., 73, 77;
Fayerweather v. *Ritch*, 195 U. S., 276, 301;
Gunter v. *Atlantic Coast Line*, 200 U. S., 273, 291;
Berryman v. *Whitman College*, 222 U. S., 334, 346.
Cromwell v. *County of Sac.*, 94 U. S., 351, 352-353.

The decision of the Court of Customs Appeals in Suit 2215 as to the questions there decided is conclusive between the same parties in a second suit concerning taxes subsequently assessed under the same statute, although the second suit involves a separate claim or cause of action.

New Orleans v. *Citizens' Bank, supra;*
Baldwin v. *Maryland, supra;*

Deposit Bank v. *Frankfort, supra;*
Citizens' Bank v. *Parker, supra;*
Gunter v. *Atlantic Coast Line, supra.*

The concurrent findings of the Court of Customs Appeals and the Board of General Appraisers in the present suit was to the effect that the additional testimony introduced in the present suit did not "change the facts" or throw any new light on the case (R., 408, 412).

The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by this Court, unless shown to be clearly erroneous.

Washington Securities Co. v. *United States,* 234 U. S., 76, 78;
International Navigation Co. v. *Farr & Bailey Mfg. Co.,* 181 U. S., 218, 224.

Additional testimony introduced in a second suit, which is merely cumulative, will not affect the conclusiveness of the decision in the earlier case where the parties and questions decided are the same. The application to consider that evidence is practically an application for a rehearing as to the things directly determined in the former suit.

Southern Pacific R. R. Co. v. *United States,* 168 U. S., 1, 65.

II.

The requirement in Section 195 of the Judicial Code, as amended August 22, 1914 (c. 267, 38 Stat. 703), that the certificate of importance must be filed "before the decision of the Court of Customs Appeals is rendered" would be virtually nullified if the petition should be granted in this second suit.

Section 195 of the Judicial Code as amended, provides three conditions under which a petition for certiorari may be filed. The first two conditions deal with cases in which there is drawn in question the construction of the constitution of the United States and treaties made pursuant thereto. The present case does not involve any constitutional or treaty question. The third condition, and the one invoked in the present proceeding, appears in the Code in the following language:

> "or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the Court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, * * *."

The clear purpose of the section is opposed to the filing of a certificate of importance and petition for certiorari after a question has been distinctly put in issue and directly determined in a prior suit. Manifestly this right of review was intended by Congress to be open impartially to the Government and the taxpayer. That is the plain purpose of requiring the preliminary certificate to be filed "before the decision of the Court of Customs Appeals is

rendered." and before either party could know the outcome. The whole purpose and principle of this provision would be virtually nullified if this Court, by granting the writ in a *second* suit, should sanction the practice here attempted, whereby the Government, after an adverse decision, could avoid and circumvent the requirement of the section by filing the certificate and petition in a second suit involving the identical questions decided in the first suit.

Owing to the nature of customs procedure, practically every case decided by the Court of Customs Appeals is a test case. Protests involving subsequent importations wherein the same questions are involved are invariably suspended in the files of the Board of General Appraisers to await the outcome in the test case. These suspended protests furnish the opportunity to file innumerable appeals to the Court of Customs Appeals, subject only to such limitations as may be included in the rules of *res adjudicata* and *stare decisis*.

If filing the certificate could be deferred until after the Court of Customs Appeals has announced its decision, by the mere expedient of appealing a suspended protest, then the time prescribed by the statute for filing the certificate and the time prescribed for filing the application for certiorari would be indefinitely enlarged.

If a decision adverse to the Government in the first suit should be regarded by the Attorney General as a controlling factor in determining whether the certificate should be filed, it would be obviously useless for a taxpayer to apply for a certificate in a second suit, where an earlier suit involving the same questions had been decided in favor of the Government. On the other hand, if the Attorney General should be entirely impartial in

the matter and should make it a practice to issue the certificate upon the request of the taxpayer in a second suit where the initial test case had been decided in favor of the Government, the adoption of such a policy would create an equally unfortunate condition. The natural result would be that neither side would, in future cases, seek a certificate until the Court of Customs Appeals had decided the initial case. Under such a practice no one would know when a decision of the Court of Customs Appeals could be accepted as final. Merchants and manufacturers, who necessarily adjust their prices according to the rates of duty charged upon imports, would never know when a rate of duty could be accepted as finally determined.

III.

The purpose of certiorari is not merely to give a defeated party another hearing.

The petitioner does not claim, either in his petition or brief, that there is any element of importance in the present suit that was not present, and equally well-known, prior to the decision of the Court of Customs Appeals in Suit 2245. The fact that the decision in Suit 2245 was adverse to the Government did not constitute a valid reason for appealing another suit to the Court of Customs Appeals for the obvious purpose of eventually obtaining a review in this Court by certiorari of the identical questions decided in Suit 2245.

The purpose of certiorari is not merely to give the defeated party another hearing.

Magnum Co. v. *Coty*, 262 U. S., 159, 163.

IV.

Even in the absence of a technical estoppel this case presents no reason for granting a writ of certiorari.

A. *Petitioner's assertion as to the amount of refunds involved in the present case and in cases dependent upon its outcome, is based upon a misapprehension of the facts.*

The petitioner stresses the point that because of the amount involved the case is of great public interest and of importance to the Treasury of the United States. We believe a complete answer to this contention is that most of the cases decided by the Court of Customs Appeals are of great importance to the Treasury of the United States and most of them are of great importance to the industries of the United States. The Court of Customs Appeals, however, was created to finally settle cases of great importance to the Treasury and to the public interests. Every time the Court of Customs Appeals determines the tariff classification of any staple commodity, such as wool, it necessarily determines a question of great importance. If the law under which the classification is made is in effect at the time of the Court's decision, the monetary importance is measured not only by the amount of assessments already made but also by such as would be made during the entire life of the Act in question. Measured in this way many of the decisions of the Court of Customs Appeals are of far more importance than the present one. In the present case we are dealing with a statute that was repealed in September, 1922, and which was on the statute books only about sixteen months. The case is of no importance whatever in so far as existing laws are concerned.

As indicating the unreliability of the figures specified by the petitioner we refer specifically to the first decision of the Court in the present issue, namely, *Stone & Downer Co., et al.* v. *United States* (Suit 2245) 45 Treas. Dec., 167. In that case the duties challenged by protests amounted to $202,908.30. After the entries were audited and reliquidated under the Court's decision, there was refunded to the importer the amount of $844.20. These figures are taken from the official liquidation by the Collector of Customs at the Port of Boston and may be readily verified by that official. The proceedings in said case are a part of the record in the present case. While the Collector's liquidation is not a part of the printed record, yet it constitutes the official act of the Collector pursuant to the decree of the Court.

We, of course, are unable to say that the same ratio exists between the duties claimed and the duties that might be eventually refunded in the case of the 4000 protests referred to by the petitioner. Yet it is the only case of an actual refund under the present issue and we believe it shows the utter unreliability of the figures stated by the petitioner in the present proceeding. The petitioner states that the amount of refunds involved in the present case is over $200,000. He does not state, however, nor do we believe that he would be willing to state, that $200,000 would be refunded to the importer under the decision of the Court of Customs Appeals.

An official estimate of the amount of duties challenged by protest in the 4000 protests referred to would not be even an approximate estimate of the refunds that would be made following the decision in the present case.

B. *The petitioner seeks a construction of the Statute inconsistent with its terms and should the writ be granted,*

frankly proposes to submit to this Court data gathered from the journals of Congress, which has repeatedly been held to be inadmissible for that purpose. The petition is wholly without merit.

In the opinion below and in the prior opinion in Suit 2245, the Court of Customs Appeals specifically held that the provision of law in question is not ambiguous (R., 414).

In clear language the tax is prescribed for and limited to "clothing wool."

The term "clothing wool" is not ambiguous. On the contrary as pointed out in the opinions below, it is defined in the dictionaries, encyclopedias and publications of the federal government. It is a term of general use and common understanding among those to whom the law is addressed,—men engaged in wool commerce and trade. The precise term has been repeatedly used in prior tariff acts.

All of these sources of information unite in one common meaning for the term—the meaning accepted by the Court of Customs Appeals. In every instance "combing wool" is specifically excluded from the meaning of the term.

That the wool at bar is "combing wool" is nowhere disputed nor indeed could it be, because the practically unanimous testimony establishes that fact beyond controversy.

The distinctions between "clothing wool" and "combing wool" all fully described in the Tariff Commission's report to Congress (1921) and in bulletins of the Department of Agriculture, quoted from in the opinion in Suit 2245 (45 Treas. Dec., 171, 172—Appendix herein pp. 54-56). These publications alone would remove any doubt

as to what Congress understood to be the scope and meaning of the term "clothing wool,"—a scope and meaning verified by the lexicographers.

That was the view taken by Judge Lacombe, speaking for the Circuit Court of Appeals, when confronted with a somewhat similar situation in *United States* v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, 112; see also *Merck* v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35.

The clear purpose of the petition is to obtain a reargument of the contention that the taxing provision should be enlarged by construction so as to include "combing wool," in order to meet a supposed policy of Congress which petitioner alleges is revealed in the history of the times, committee reports, and in remarks made by individual members of Congress in committee hearings and in debates on the floor of the House and Senate.

At page 17 of his brief, petitioner insists that the above sources of information indicate the congressional intent to protect *"the large body of domestic wool producers"* and that the exemption of "combing wool" from the tax as claimed by the importers would defeat the purpose of the legislature *"as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade."*

At page 10 of his brief, petitioner insists that the intention of Congress, ascertained in the manner above indicated, should be followed *"even though the intent when ascertained may not be consistent with the strict letter of the statute."*

Neither the record nor any other source of information supports the contention that only a small class of domestic growers produce wool of the clothing grade. But how-

ever that may be, the petitioner's assertions merely admit the distinctions between the two classes of wool and emphasize the fact that the statute as written does not include "combing wool."

One very significant feature of the petition and brief is that nowhere is there a direct averment that the language of the statute is either ambiguous or obscure. On page 9 of the brief, the petitioner says that *"the title of the Act and its declared purpose would seem to suggest that if any doubt arises as to the meaning of its provisions, inquiry should lead into an examination of the history of the times,"* etc. An examination of the title, however, fails to reveal any such admission or directions.

Nowhere, however, in the petition or brief does the petitioner stand squarely upon the proposition that the words of the Act are ambiguous, yet under the clear rule of decision, that is a necessary condition precedent to the consideration of the data set forth in his brief, and which, presumably, he would submit to this Court should the writ be granted.

Even where the terms of an act are obscure or ambiguous, this Court has never authorized an indiscriminate search for intent through the journals of the legislature, such as petitioner resorts to in his brief and the appendix thereto. Most of the references in the brief are to statements made by individual members of Congress in debates or during committee hearings. In one of the very cases relied upon by the petitioner (Brief, p. 21) namely, *Duplex Printing Press Co.* v. *Deering*, 254 U. S., 443, 474, this Court speaking through Mr. Justice Pitney said:

> "By repeated decisions of this Court it has come to be well-established that the debates in Congress expressive of the views and motives of individual

> members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law making body."

In *Pennsylvania R. R. Co.*, v. *International Coal Mining Co.*, 230 U. S., 184, 199, it was said, in regard to reports of Committees:

> "While they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of a committeee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different."

There is nothing referred to in petitioner's brief to indicate that there was any legislative intention to include "combing wool" in the assessment, nor is there anything to indicate that Congress did not believe that an assessment on clothing wool, only, would properly meet the existing emergency and supply the necessary protection to the wool growing industry, or at least as much protection as the majority deemed it wise to ask for in a bill that was bitterly opposed in an almost equally divided Congress.

While the respondent has no reason to feel alarmed at the prospect of an inspection of any of the data referred to by the petitioner, yet, the data in question does not furnish any possible ground for a review of the conclusions of the Court below.

Petitioner seems to have adopted the view that the Court, rather than Congress, is the final arbiter of the character of legislation necessary to meet the emergency existing at the time the law was passed and to that end should first examine the history of the times, the reports of committees, arguments in the debates and discussions in committee hearings and, having reached a conclusion

as to the thing necessary to be done, should proceed to reform the law as passed so as to make it conform to what the Court might regard as a wiser determination of the questions of political economy debated and discussed in its legislative history.

Proceeding upon the above theory the petitioner has set forth in his brief a description of the financial and industrial emergency existing at the time the law was enacted, apparently with the view that the Court should study the emergency for the purpose of determining whether or not the law adequately met that emergency, and that the Court should compare the measure of protection given to producers of clothing wool and the measure of protection given to the producers of combing wool, and if it should be found, as petitioner alleges at page 17 of his brief, that an assessment of duty on clothing wool only would not properly meet the emergency and would leave the producers of combing wool without protection, that the Court should enlarge the provision so as to include combing wool in the enactment, although the inclusion of combing wool may not be consistent with the strict letter of the statute. This seems to be the thought petitioner had in mind on page 10 of his brief where he cites the case of the *Church of the Holy Trinity* v. *United States*, 143 U. S., 457, 459, in support of the assertion that the *"act should be interpreted according to the intention of the legislature * * * even though the intent when ascertained may not be consistent with the strict letter of the statute."*

In other words the petitioner proposes to contend in this Court that the language of the law, however clear, must give way to a construction that the Court might regard as better serving the reasons that induced its enactment.

The rule, however, as established by this Court is the other way around. It must be presumed that the assessment of duty on clothing wool met the emergency just as Congress intended that it should be met and provided the protection that Congress intended should be provided, and that an assessment of duty on "combing wool" was not deemed necessary or expedient in order to accomplish the purpose.

The rule was clearly stated by this Court in *McKenzie* v. *Hare*, 239 U. S., 299, 308, where Mr. Justice McKenna, speaking for this Court, said at page 308 of the opinion:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language, or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussion some may have given more prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

Furthermore the alleged discrimination against the growers of combing wool would not justify the interpolation of the term "combing wool" into the provision by the Court.

In *Chung Fook* v. *White*, 264 U. S., 443, this Court had before it a case involving an exceptional instance of discrimination. Section 22 of the Immigration Act of February 5th, 1917 (chapter 29, 39 Stat., 891) made an exception to the general prohibition against the entrance into the United States of aliens afflicted with dangerous contagious diseases. The exception was in the case of the

alien wife or child of a naturalized citizen, who might be admitted for hospital treatment. The provision, however, failed to mention native born citizens, so that according to its terms there was a definite discrimination against a native born citizen in favor of a naturalized citizen. This Court was asked to construe the law so as to include native born citizens. Speaking through Mr. Justice Sutherland, this Court took the view that it could not interpolate the words "native born citizen" without usurping the legislative function, and on page 446 of the opinion, it was said:

> "The words of the statute being clear, if it unjustly discriminates against the native born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional."

As was pointed out by Judge Bland in the opinion below (R., 415) the Court is not permitted "to speculate as to why Congress, as a whole or as individuals, would wish to include or exclude one of the well-known grades of wool from the protective tariff provision."

As was stated by this Court through Mr. Justice Hughes in a customs case: *United States* v. *Citroen*, 223 U. S., 407, 415:

> "We are not concerned with the reason for the distinction; it is enough that Congress made it."

In an early customs case decided by this Court in *Pennington* v. *Coxe*, 2 Cranch., 33, 59, Mr. Chief Justice Marshall, speaking for the Court, said:

> "These political motives which induced the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration."

In view of the fact that the law as enacted clearly omits combing wool from the taxing provision it would be useless for petitioner to attempt to show that it was the policy of the Government to include it.

In *United States* v. *First National Bank*, 234 U. S., 245, it was said, at page 260 of the opinion:

> "But the policy of the Government in passing legislation is often an uncertain thing, as to which varying opinions may be formed, and may, as is the fact in this case, afford an unstable ground of statutory interpretation." Citing Hadden *v.* The Collector, 5 Wall, 107, 111.

Even if it could be shown that there was no good reason why combing wool should have been omitted from the statute, that would not constitute a reason for its being interpolated by the Court. In *Bates Refrigerating Co.* v. *Sultzberger*, 157 U. S., 1, 37, it was said:

> "It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The rule against enlarging the subject matter of a statute by judicial interpretation has been applied with even greater particularity in the case of statutes levying taxes including customs duties.

In *Eidman* v. *Martinez*, 184 U. S., 578, 583, this Court speaking through Mr. Justice Brown said:

> "We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language."

The same rule was again stated in *Gould* v. *Gould*, 245 U. S., 151, 153, wherein Mr. Justice McReynolds speaking for the Court said:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. United States *v.* Wigglesworth, 2 Story, 369; American Net & Twine Co. *v.* Worthington, 141 U. S., 468, 474; Benziger *v.* United States, 192 U. S., 38, 55."

The rule was again repeated in *United States* v. *Merriam*, 263 U. S., 179, 187, 188, wherein *Eidman* v. *Martinez*, *supra*, was cited with approval. Mr. Justice Sutherland speaking for the Court referred to a still earlier recital of the rule by Lord Cairns in *Partington* v. *Attorney-General*, L. R. 4 H. L., 100, 122, from which we quote the following:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

It will thus be seen that even if the present question were one of doubt, the doubt would be resolved in favor of the importer.

In *American Net & Twine Co.* v. *Worthington*, 141 U. S., 468, this Court had under consideration the tariff classification of certain "gilling twine." Mr. Justice Brown speaking for the Court said at page 475 of the opinion:

> "We think the intention of Congress that these goods should be classified as "gilling twine," is plain; but were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language."

The same view has been taken by this Court in other customs cases.

> *Hartranft* v. *Weigmann*, 121 U. S., 609, 616;
> *Benziger* v. *United States*, 192 U. S., 38, 55.

C. *In reaching its conclusions, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right.*

The plain facts of the case are these: The Emergency Act in clear language requires a duty on clothing wool. The wool at bar is combing wool. Clothing wool and combing wool are separate, distinct and different classes of wool. That the present wool is in fact combing wool does not seem to be anywhere disputed, nor indeed could it be, because that fact was well-established by the practically unanimous testimony of all the witnesses including those called by the Government.

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined in the dictionaries, encyclopedias and publications of the federal government, including the Tariff Commission and the Department of Agriculture. The Court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by witnesses from various branches of the wool industry.

As to the testimony of the witnesses, Judge Bland, speaking for the Court, says in the opinion in Suit 2215 (15 Treas. Dec., 169) (Appendix, pp. 49, 50):

> "The record sets out the testimony of numerous witnesses, all of whom have had wide experience in connection with some phase of the woolen question either as purchasers, sellers, appraisers, sorters, importers, exporters, or classifiers. It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms "clothing wool" and "combing wool." With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers in the woolen system of manufacturing, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system."

In regard to the lexicographers and federal publications, Judge Bland on the same page of the opinion says, as follows:

> "The dictionaries, lexicons, encyclopedias, and writers on the woolen industries, as well as such agencies of the Government as the Tariff Commission and the Agricultural Department, vary but

> little in their definitions of clothing wool and combing wool, and all, with but few and immaterial exceptions, define clothing wool as a wool of short fiber used in the woolen process, and distinguish it from combing wool, which they define as another class of wool having a long fiber, used in the worsted process, in which process it is combed."

The opinion sets forth copious extracts from the authorities referred to wherein the terms "clothing wool" and "combing wool" are defined and discussed.

In regard to the use of the terms "clothing wool" and "combing wool" in prior tariff acts, the opinion sets forth the material wording of every tariff provision covering wool from the Act of May 19th, 1828 down to and including the Act of 1913 (45 Treas. Dec., 181, 182, see also Appendix hereto, pp. 70-74).

It will be noted that the terms "clothing wool" and "combing wool" are used constantly throughout the legislation in question, and wherever they are used they describe separate and distinct classes of wool.

All of the above sources of information united in one common use and definition of the term "clothing wool," and in view of this universally accepted understanding and meaning for the term, the Court held that its meaning was not ambiguous.

The mere fact that the term is widely used, discussed and defined in official publications of the federal government would in itself leave no doubt as to what Congress understood to be the scope and meaning of the term.

In the latter connection it might be noted that as late as May 26, 1924, the Treasury Department in a regulation requires importers of wool to classify clothing wool and

combing wool separately on their customs entries, T. D. 40217 (45 Treas. Dec., 670).

In *United States* v. *Buffalo Natural Gas Fuel Co.*, 78 Fed., 110, the Circuit Court of Appeals, in the Second Circuit, had before it a customs case brought there, under the then existing procedure, from the Board of General Appraisers. The question before it involved the meaning of the term "minerals" as used in a tariff provision, the specific question being whether it included "natural gas." It was there found that natural gas was listed as a mineral in the "Statistical Abstract of the United States" prepared under the direction of the Secretary of the Treasury and containing statistics of finance, coinage, commerce, etc. In its opinion, the Court speaking through Judge Lacombe, said, at page 112:

> "If the question whether the word 'mineral' in ordinary speech would include such an article as natural gas, were to be settled solely from reference to the dictionaries, its solution might not be easy. In view, however, of the various official publications by the federal government set forth in the record, and which are not intended for scholars or scientific men, but to give to Congress and to the people the best knowledge the compilers can, there can be little doubt as to what Congress understood to be the scope and meaning of the words,—a scope and meaning which is within some, at least, of the definitions of the lexicographers."

In *Merck* v. *United States*, 6 Ct. Cust. Appls., 32, 34, 35, official bulletins published by the Department of Agriculture were accepted as determinative of the meaning of the term "sheep dip."

In the present instance all dependable sources of in-

formation unite in one common definition of the term "clothing wool," and it would be obviously absurd to say that Congress with this information before it, would deliberately select the term "clothing wool" intending that it should be given a meaning different from that in which it was understood wherever and whenever it was used.

The petitioner urges that the Court should not have given consideration to the testimony of commercial witnesses as to the meaning and use of the term. The contention, however, is obviously without merit. In the first place, the Court did not base its conclusion as to the meaning of the term solely upon the testimony of commercial witnesses. That was merely one of the considerations. As we have already pointed out, the Court gave full consideration to the definitions in the dictionaries, encyclopedias, publications of the federal government and to the use of the term in prior tariff acts. All of these sources united in one common meaning. Obviously the commercial understanding could not be excluded without excluding the only meaning in which the term is ever understood or used. The union of these various sources in a common definition simply established what already existed as a presumption. Thus in *Swan* v. *Arthur*, 103 U. S., 597, this Court said:

> "While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

Furthermore, there was ample authority for the Court to give due and proper consideration to the testimony of the commercial witnesses as to the use and understanding

of the term. Raw wool because of its very nature exists only as an article of commerce. Laws imposing duties upon imported merchandise are intended for practical use and application by men engaged in commerce and presumably are drafted in language understood by those to whom they are necessarily directed. This was early recognized by this Court in *Re Two Hundred Chests of Tea*, 9 Wheat., 438, wherein Mr. Justice Storey, speaking for the Court said, at page 438 of the opinion:

> "The object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade."

In *Elliott* v. *Swartwout*, 35 U. S. (10 Pet.), 137, 151, this Court speaking through Mr. Justice Thompson, said:

> "Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denominations of articles, according to the commercial understanding of the terms used."

In *Hedden* v. *Richard*, 149 U. S., 346, 349, this Court, speaking through Mr. Justice Shiras said, in regard to a tariff provision:

> "The words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed."

The above rules have been universally followed in the interpretation of tariff provisions. In fact, they were followed by the Court of Customs Appeals in an earlier

case involving the same provision of the Emergency Act as is involved in the present case, namely "wool, commonly known as clothing wool." *United States* v. *Davies*, 11 Ct. Cust. Appls., 392, 395. In the latter case, the Government accepted the decision without further agitation and a large number of claims were settled thereunder by stipulation.

As was clearly pointed out by the Court of Customs of Appeals in its opinion in Suit 2245, none of the words of the present provisions,—"wool, commonly known as clothing wool"—is new to tariff legislation. The identical phrase "commonly known as" has been used in connection with other merchandise in prior tariff acts. Thus in *Tiffany* v. *United States*, 131 Fed., 398, the Court was called upon to determine the character of articles coming within the provisions for "articles commonly known as jewelry." Its conclusion was based upon the testimony of witnesses from various branches of the trade. The decision in *Tiffany* v. *United States, supra*, was acquiesced in by the Treasury Department in Treasury Decision 25316 (7 Treas. Dec. 840). In the opinion in Suit 2245, Judge Bland also called attention to the fact that the synonymous phrase "usually known" has appeared in five prior tariff acts in connection with the commercial names of various classes of wool, such as Leicester, Cotswold, Lincolnshire Down Combing Wools, Canada Long Wools, etc., and that "no Court or administrative official has held that the phrase 'usually known' changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade" (45 Treas. Dec., 177, 178). (Appendix herein, pp. 64, 65.)

In *Cooper* v. *Dobson*, 157 U. S., 148, this Court had

under consideration an importation of short goat hair that had been classified for duty under Schedule K of the Tariff Act of 1883 in the following provision (22 Stat., 488, 508):

> "Class two, combing wools.—That is to say, Leicester, Cotswold, Lincolnshire down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat, and other like animals."

The importers contended that the goat hair in the importation was too short to be suitable for combing and asked this Court to construe the above provision "as meaning that class two should consist wholly of articles that could be used for combing purposes, that is, as well hair of the goat as wools that were susceptible of treatment by combing," thus excluding the hair in question.

In declining to construe the provision in the manner requested this Court, speaking through Mr. Justice Shiras said at page 153:

> "Adopting the reasoning and the language of the opinion of the Circuit Court of Appeals above referred to, we hold that, upon the face of the Act of 1883, and according to the clear and unambiguous meaning of its words, no wools, indeed, are included in class 2, except combing wools or wools fit for combing; but that there is no such restriction with regard to hair * * *."

The opinion of the Circuit Court of Appeals referred to, was *United States* v. *Hopewell*, 51 Fed., 798 (5 U. S. App., 137).

If the phrase "usually known" as used in the above provision does not make the meaning of the term "comb-

ing wool" ambiguous, there is no reason why the synonymous phrase "commonly known" should make the term "clothing wool" ambiguous in the present enactment.

Long staple wool is usually or commonly known as combing wool. Short staple wool is usually or commonly known as clothing wool. Combing wool is suitable for combing, clothing wool is not.

While the origin of the respective classes has changed during the past fifty years and cross breeding has somewhat changed the blood distinctions, yet the fundamental difference between the two classes—clothing wool and combing wool—is the same today that it has always been —clothing wools are and always have been the short wools used in the woolen industry, combing wools are and always have been the long wools used in the worsted industry.

Having found that the terms of the Act were unambiguous and that the term "clothing wool" when given its normal and generally accepted meaning, did not include combing wool, the Court of Customs Appeals declined to enlarge the taxing provision so as to include a class of wool not included within the clear meaning of its terms.

In the foregoing we have discussed the reasoning and conclusions of the Court of Customs Appeals in Suit 2245.

When these precise questions came up again to the Court of Customs Appeals in the present proceedings, Judge Bland again speaking for the Court said, in the opinion below (R., 413):

> "When we read the testimony of additional witnesses and consult additional authorities, it becomes more apparent that the common meaning

of the words 'clothing wool' is that it is a short-fibered wool."

Respondents respectfully submit that the conclusions of the Court of Customs Appeals were based upon sound and well-established principles and that there is no occasion for further review.

D. *The precise question at issue is one of classification of merchandise. It is an ordinary customs case with the usual issues. Since the creation of the Court of Customs Appeals, certiorari to that Court has been confined for the most part to cases involving treaties, jurisdictional questions and important questions other than the classification of merchandise.*

Petitioner has attempted to create impressive issues of statutory construction that really have no appropriate place in the present discussion. When shorn of such issues, which are merely the creation of tenuous argument, the case resolves itself into an ordinary question of customs classification. Questions of this kind are constantly before collectors of customs for determination. The simple question is,—should the wool at bar be classified as clothing wool? That, and that only, is the question in the present case.

Prior to the creation of the Court of Customs Appeals, decisions of the Collector and the Board of General Appraisers were reviewed by the Circuit Courts and Circuit Courts of Appeals in the circuits where the importations in question were entered. Under this procedure it was frequently necessary for this Court to review by certiorari ordinary customs cases in order to reconcile conflicting decisions between the different circuits.

At an earlier period prior to 1890, the number of ordi-

nary customs cases reviewed by this Court was even greater because under Section 699 of the Revised Statutes, these cases could be brought to this Court on writ of error. When the Court of Customs Appeals was created by Section 29 of the Tariff Act of 1909 (36 Stat., 11, 105) the new Court was given exclusive appellate jurisdiction to review by appeal decisions of the Board of General Appraisers.

Since the creation of the Court of Customs Appeals, eighteen petitions for certiorari have been filed, six of these were granted, ten were denied and two including the present case are pending.

An examination of the six cases wherein writs were issued shows that for the most part they involved treaty, jurisdictional and other important questions other than the classification of merchandise. The six cases are as follows:

The Five Per Cent. Discount cases, 243 U. S., 97;
Nicholas v. *United States*, 249 U. S., 34;
F. Vitelli v. *United States*, 250 U. S., 355;
United States v. *Aetna Explosives Co.*, 256 U. S., 402;
United States v. *Rice*, 257 U. S., 536;
United States v. *Fish*, 266 U. S., 598 (Ad. Sheets).

From a practical commercial point of view, there exist very impelling reasons why customs cases involving merely questions of classification of merchandise should not be made the subject of certiorari.

To the merchant who is importing merchandise and who must adjust his prices according to the rate of duty applicable, and to the domestic manufacturer who is competing with imported commodities and who must fix his

prices according to the rate of duty applicable to the competing imported commodities, an expeditious and final determination of the rate of duty applicable to a given commodity is frequently as important and sometimes more important than what that particular rate shall be.

Undoubtedly, the purpose of creating the Board of General Appraisers and later the Court of Customs Appeals was to supply procedure whereby questions of classification could be expeditiously and finally determined by tribunals specially equipped and experienced in this specialized branch of jurisprudence. Where constitutional and treaty questions, or questions of jurisdiction or important questions of procedure are drawn in the situation presents a different aspect and the amendment to the Judicial Code making provision for certiorari was undoubtedly intended to apply to such situations.

It was clearly not the purpose of the Code to have presented to this Court the question as to whether a shipment of wool should be classified as clothing wool or as combing wool.

CONCLUSION.

In view of the foregoing it is respectfully submitted that the present case presents no reasons for the issuance of a writ of certiorari.

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September, 1925.

APPENDIX.

Section 195 of the Judicial Code, as Amended August 22nd, 1914, c. 267, 38 Stat. 703.

SEC. 195.—The Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases: *Provided, however,* That in any case in which the judgment or decree of the Court of Customs Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the petition of either party, filed within sixty days next after the issue by the Court of Customs Appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: *And provided further,* That this act shall not apply to any case involving only the construction of section one, or any portion thereof, of an act entitled "An act to provide revenue, equalize

duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, nor to any case involving the construction of section two of an act entitled "An act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July twenty-sixth, nineteen hundred and eleven.

Paragraphs 18 and 19 Emergency Tariff Act of May 27, 1921—(42 Stat. 9, 10).

Par. 18.—Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Par. 19.—Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

Paragraph 650 of the Free List of the Tariff Act of October 3, 1913, 38 Stat. 114, 164.

Par. 650.—Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Opinion of the Court of Customs Appeals of November 17, 1923, in Suit 2245 (Stone & Downer v. United States, 45 Treas. Dec. 167, T. D. 40019).

(T. D. 40019.)

WOOL—EMERGENCY ACT.

STONE & DOWNER CO. ET AL. *v.* UNITED STATES (No. 2245).

UNITED STATES COURT OF CUSTOMS APPEALS,

November 17, 1923.

APPEAL FROM BOARD OF UNITED STATES GENERAL APPRAISERS, G. A. 8613 (T. D. 39473).

[REVERSED.][1]

Before—MARTIN, Presiding Judge, and SMITH, BARBER, BLAND and HATFIELD, Associate Judges.

BLAND, Judge, delivered the opinion of the court:

The merchandise covered by this appeal consists of wool, worsted yarn, and worsted cloth. The wool was assessed for duty under paragraph 18 of the emergency tariff act of 1921, reading "wool, commonly known as clothing wool." Appellants claim that the wool in ques-

[1] See denial of rehearing, post.

tion is combing wool, and that the yarn and cloth are made from combing wool. The yarns and cloth were assessed for duty under paragraphs 287 and 288 of the act of 1913, and in addition 45 cents per pound under paragraph 19 of the emergency act. It is the contention of the importers that combing wool is not included in paragraph 18, and that their importation falls under the free list of the act of 1913, paragraph 650.

The three paragraphs with which this case is concerned are paragraphs 18 and 19 of the emergency act, and paragraph 650 of the act of 1913, as follows:

The emergency act—

> 18. Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animals without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.
>
> 19. Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law—

and paragraph 650 of the act of 1913, reading as follows:

> 650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

The importers' position is that the words "commonly known as clothing wool" have a well-settled meaning commercially, and with all those who are familiar with the woolen subject, and that "combing wool" is distinct from "clothing wool," and therefore not included in paragraph 18.

The Government contends that "clothing wool" is used here in a broad sense to mean all wool used for making clothing, and that the words "commonly known as" give them a different meaning from that usually applied commercially to a class of wool.

The record sets out the testimony of numerous witnesses, all of whom have had wide experience in connection with some phase of the woolen question either as purchasers, sellers, appraisers, sorters, importers, exporters, or classifiers. It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms "clothing wool" and "combing wool." With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers in the woolen system of manufacturing, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system. The woolen system of manufacturing embraces the process of carding, while the worsted system of manufacturing embraces the process of combing. While there may be exceptions to

the rule, short wools are carded and long wools are combed. The two main classes of wools, therefore, have sometimes been stated as consisting of carding wool and combing wool. But, as a general thing, carding wool and combing wool have been used synonymously. The dictionaries, lexicons, encyclopedias, and writers on the woolen industries, as well as such agencies of the Government as the Tariff Commission and the Agricultural Department, vary but little in their definitions of clothing wool and combing wool, and all, with but a few and immaterial exceptions, define clothing wool as a wool of short fiber used in the woolen process, and distinguish it from combing wool, which they define as another class of wool having a long fiber, used in the worsted process, in which process it is combed. The following are some of the definitions taken from various sources:

> Sheep are classified on the length of staple into short wools, medium wools, and long wools.
>
> Wool is classed under three general heads: (1) The carding or clothing wools, (2) the combing or worsted wools, and (3) miscellaneous or carpet and blanket wools. (Nelson's Perpetual Loose-Leaf Encyc. Vol. XII, Wool, p. 634.)
>
> The length of staple, which is made a basis of general classification, is largely a constitutional or breed characteristic, the staple being from 1 to 2 inches long in the finest Merinos, 8 inches or more in the Lincolns, and reaching 12 and even 15 inches in some combing wools, the length of staple suggesting the grouping of sheep into short wools, middle wools, and long wools. The fine felting wools have a short staple, as a rule, and are used for carding or yarn purposes, while the longer, more lustrous and less wavy ones are better suited to combing and worsteds. * * * The three main classes of wool on the basis of staple are: (1) Carding or clothing wools, or those of the Merino type, in which felting qualities are desired;

(2) combing wools, in which length of staple is required and felting qualities not desired, used for hard-spun, non-felting worsteds; and (3) miscellaneous, sometimes called carpet or blanket wools, long, strong, coarse wools, used for carpets, blankets, and coarse clothing. The clothing wools are commonly classified as picklock * * *, picklock being an extremely fine fiber. The mass of high-grade clothing is made of the XX and X grades. The combing wools, often called Delaines, were formerly derived from the English mutton breeds, but machinery has been adapted for combing the Merino carding or felting wools, which have been lengthened by breeding and selection. The clothing wool used in the United States, aside from home production, is derived mainly from Australia, South America, and South Africa. The imported combing wool comes mainly from Great Britain, although much comes from New Zealand, Argentina, and Canada. The coarse carpet wools are the product of neglected flocks and unskilled breeding throughout the world. (New International Encyc., Wool, vol. 20, pp. 642-643.)

Wool is divided into pull and clipped or fleece wools, the former being pulled by the roots from the pelt of the dead animal, and the latter clipped from the living one. The clipped wools form the greater part of the wool in market, and these again are divided into long and short staple, or combing and clothing wools. (Appleton's New Practical Cyc., vol. 6, p. 131.)

Wools are divided into two great classes, clothing wools and combing wools, and the fabrics woven from them are termed woolens and worsteds. (Knight's Cyc. of Industry, Woolen and Worsted Manufactures, p. 1795.)

According to the Bradford system of manufacture, wools are classed as "combing" or "clothing."

A wool to be combing must be at least 2½ inches in length, while wools shorter than that are used for carding and are termed "clothing."

There is a third class called "carpet wools," which includes the very coarse wools and inferior wools not well adapted to the finer class of goods for which the first two classes are used. Carpet wools, are, however, either carded or combed.

The introduction of the French comb has made it possible to comb wools of a shorter length than heretofore, and many of the wools formerly used for carding or clothing are now combed with this comb and are known as "baby combing."

The terms "staple" or "combing" and "clothing" are often added to the grade names to distinguish them. Both the staple or combing and the clothing of a given grade are the same fineness, but the combing wools are generally used for the manufacture of worsteds, while the clothing is used in the manufacture of woolens. (Encyclopedia Americana, Vol. 29, pp. 501, 502.)

Wool when shorn is divided into two classes, short wool or carding wool, seldom exceeding a length of 3 or 4 inches, and long wool or combing wool, varying in length from 4 to 8 inches, each class being subdivided into a variety of sorts according to the fineness and soundness of the staple. (Century Dictionary, 1911, Wool.)

Clothing wool—a fine, close, short-stapled wool. (Webster's New International Dictionary.)

Wool—The three main classes on the basis of staple are (1) carding or clothing wools, or those of the Merino type, in which felting qualities are desired; (2) combing wools in which length of staple is required; and (3) miscellaneous wools, long, strong, coarse wools used for carpets, blankets, and coarse clothing and sometimes called "carpet" or "blanket" wools. Webster's New International Dictionary.)

Combing wool.—A wool adapted for being combed. (Webster's New International Dictionary.)

Clothing wool—a compact, fine, short-fibered wool suitable for felting. (Standard Dictionary.)

Clothing wool—a wool usually short and fine in fiber, specially suited in structure of fiber for the woolen trade.—The Wool Year book, 1923, p. 495. ("Textile Mercury" Annuals.)

The term "clothing" is applied to wools specially adapted for woolen manufacturing, distinguishing them from "combing" wools used in the production of worsted yarns. The properties relate to fineness of fiber, felting, strength and elasticity, length of staple, softness of handle, and purity of color.—Roberts Beaumont, "Woolen and Worsted," p. 12 (1915).

Worsted is the fiber of wool all laid exactly parallel. Woolen is crossed and uneven like a spider's web. They take all the long hairs and straighten them exactly parallel; and the shorter ones or noils are used for woolen yarns. Only the long fibered can be made into worsted. The fibers of wool to be used in worsted are separated from the short by combing, and the fibers of woolen are crossed by carding. The former are combing wools. The latter are card and clothing wools, which formerly were the only wools used in cloths. (Wool and Manufactures of Wool, Special Report, prepared by the Chief of the Bureau of Statistics, Treasury Dept., 1888, p. XX.)

In 1918 the wool division of the War Industries Board issued the following valuation and classification for wool in connection with their Government purchases:

Valuations as of July 30, 1917.

	Basis clean scoured.
Fine Delaine	$1.85
Fine clothing	$1.75 choice, $1.70 average
Half-blood staple	1.68
Half-blood clothing	$1.60-$1.62
Three-eighths staple	1.45
Three-eighths clothing	1.42
Quarter-blood staple	1.32
Quarter-blood clothing	1.30
Low quarter-blood	1.17
Common and braid	1.07

Quoting from page 215, report of the United States Tariff Commission on the wool growing industry, 1921, we find:

> On the basis of length, the division is into "*combing*" and "*clothing.*" Combing wool is used in the Bradford (English) system of worsted manufacture, in which nearly all the shorter lengths are combed out as "noil," while the fibers are laid parallel in making the "tops," which is the first stage in the manufacturing process after scouring. Strictly clothing wools are adapted only to carding, by which process the fiber is laid in every direction, interlocked or felted, and are manufactured into "woolen" goods. Noils, which is the by-product of combing and mill waste in general, are used with clothing wools in making some woolens.

The Department of Agriculture of the United States issues various bulletins on the woolen industry, both from the standpoint of the grower and of the manufacturer. Bulletin 206 of the Department of Agriculture, under the title "The Wool Grower and the Wool Trade," on pages 5 and 6, is quoted here as follows:

> *Classes of wool.*—The value of wool is influenced

more or less by its length and it is classified accordingly. The longer wools are known as "combing" and the shorter ones as "clothing." * * * This classification is founded upon the English or Bradford system of manufacture, which requires a wool to be about 2½ inches long to be successfully combed. The lower grades of combing wools are usually considerably longer than this, as the coarser wool generally has more length. Clothing wools are shorter. Of late years a class midway between the two has sprung up, known as "baby combing." The French combs handle this length of staple quite satisfactorily. The combing wools are used in worsted manufacturing. Only the longer straightened fibers are used and these are placed parallel in the yarn. The short, broken, and tangled fibers are removed and make up the "noils." Not only is length required, but also strength. Tender wools will not stand the combing process and are unfitted for this purpose, regardless of length. None but virgin wools are used in the manufacture of worsteds.

Clothing wools are used in the manufacture of woolens, felts, etc. The fibers are laid in every direction, and instead of attempting to arrange them parallel as in worsteds, the opposite extreme is desired. Noils, shoddy, etc., can be used in this process of manufacture.

The difference in value between combing and clothing wools is from 2 to 6 cents per scoured pound in favor of the former.

Coarse, low wools, more or less resembling hair, are classed as carpet wools. A very small amount of these are produced in America, most of those used being imported from Asia. Some Navajo wool is used in carpet manufacture.

From the same bulletin, page 18, the following is quoted:

> Classification and grades of territory wool—
> Combing—
> Fine staple.
> Fine medium staple. } usually one grade.
> Half-blood staple.
> Three-eighths-blood staple.
> Quarter-blood staple.
> Low quarter-blood.
> Coarse, common, low, or braid. } often one grade.
> Clothing—
> Fine clothing.
> Fine medium clothing. } usually one grade.
> Half-blood clothing.
> Three-eighths-blood clothing.
> Quarter-blood clothing, or short quarter-blood.

In "Wool and Wool Manufacture, a Brief Analysis for the Layman," 1920, James Paul Warburg writes:

> As we take up the manufacture of worsted and woolen yarns, we shall see how these qualifications play a different part in the two processes. For the present the only difference we are concerned with is staple length. Generally speaking, wools under 2 inches are too short to be combed and are classed as clothing wools. Clothing wools are used for woolens, combing wools for worsteds. In recent years combing machinery has been devised which will comb wools under 1 inch in length so that a considerable quantity of "clothing wools" now go into worsteds (p. 11).

In trying to arrive at the proper construction of the words "commonly known as clothing wool," we are first confronted with the question, To whom did Congress intend that the interpreters of the act should look to find out what kind of wool was commonly known as cloth-

ing wool? It seems that there can be no possible dispute that if the words "clothing wool" were used by themselves there could be little contention but what the term would exclude combing wool, for the reason that all authorities and sources of information agree that clothing wool is a short-stapled wool used in woolen manufacture and in the carding process. If the Government has any strength to its position at all, it must be by reliance upon the use of the words "commonly known as."

While the authorities indicate that under improved methods clothing wools are sometimes used in the worsted process, and that combing wools are sometimes used in the woolen process, it is by no means the rule, since even with improved machinery they are not easily changed out of their former class and use without loss. In this connection the following authorities may be pointed out:

Encyclopedia Britannica, Vol. XXVIII, eleventh edition, pages 813-815—

> Prior to the invention of a really satisfactory mechanical comb, between 1850 and 1860, the combing operation was the limitation of the worsted trade * * *. The characteristic feature of wool and wool yarns and cloths is the quality of "felting." This quality has always been made use of in woolen cloths, but in worsted cloths, until comparatively recently, it has been largely ignored. To-day, however, cloths are made ranging from the truest woolen to the typical worsted, of which it would be impossible to indicate the type of yarn employed without very careful analysis.

Encyclopedia Britannica, new Vol. XXXII, page 1068—

NOTE.—Large quantities of clothing wool may be employed for combing purposes.

Tariff Commission's Report on Wool Growing Industry, 1921, page 25—

> The board (1911) also pointed out that there was no longer any good reason for distinguishing between Class I and Class II wools, because improvements in combing machinery now make it possible to use much shorter staple wools than formerly in the manufacture of worsted.

On page 26 is found—

> The distinction between Class I and Class II wools seems particularly unnecessary. The amount of wool of Class II now imported is comparatively small. Improvements in machinery are constantly bringing about an interchangeability in the use of different kinds of wool, and the case seems clear for doing away with the distinction. * * * One rate on all wool suitable for making wearing apparel and another rate on what were formerly Class III wools would do much towards this result.

It might be urged that the framers of the emergency law used the words "clothing wool" to embrace classes 1 and 2 in conformity with the apparent recommendation of the Tariff Commission, but it is clear that Congress did not adopt the recommendation of the Tariff Commission, since it did not specially say "classes 1 and 2," nor did it say, "all wool suitable for making wearing apparel."

The fact that under modern conditions some clothing wool is used in the worsted process, and some combing wool is used in the woolen process, furnishes an additional reason for Congress to have used the words "all wool" or to have included both classes by some appropriate term. Yet there is nothing in the record nor in the history of tariff legislation that tends to show that the interchangeability of use of the two classes of wool has in any way changed the use of the term by those who speak with understanding on the subject. The emergency act does not attempt to consolidate the two classes

of wool under a new term, but emphasizes the ordinary use of the name which is now used, and for generations has been used, to describe one class.

In the briefs and in the argument before this court great stress was placed upon the fact that the Congressional Record of February 1, 1921, at page 2498, shows that Senator Lodge introduced the following amendment:

> Paragraph 18, page 3, line 16, strike out the words "wool, commonly known as clothing wool," and in place thereof insert the words "all wools."

As far as we have been able to observe, the courts have never given the introduction of an amendment by a legislator the force of evidence tending to prove legislative intent, but have regarded the action of either branch of the legislature on such an amendment as having probative effect.—*Koch* v. *United States* (6 Ct. Cust. Appls., 534-8-9; T. D. 36148); *Willenborg & Co.* v. *United States* (6 Ct. Cust. Appls., 451; T. D. 35985), and *Dunlap* v. *United States* (173 U. S., 65, 75). While this kind of evidence may be considered as throwing some light upon the question of legislative intent, we are inclined to regard it as doubtful, or at least, uncertain value. We are not privileged to know what motives prompted the acceptance, rejection, or failure of consideration of proposals made by individual members. To rely upon the act of one individual member in proposing legislation, or to give much weight to the failure of the body to consider the proposal, in determining the intent of the completed legislative enactment, would be very unsatisfactory procedure in construing its meaning. It is urged by the appellant that Senator Lodge, by his proffered amendment, recognized that the words "commonly known as clothing wool" did not embrace *combing wool*, and directed the attention of the Senate to the omission; and it is urged by the Government that the failure of the Senate to discuss or consider the amendment was evidence that the Senate believed the words "wool, commonly known as clothing

wool" embraced all wool, and that the amendment was unnecessary. However, this court in Koch, *supra*, in construing paragraph 166 of the act of 1913, took special notice of a somewhat similar case, in which an amendment introduced by Senator Smoot was referred to, but in that instance the amendment of the Senator was rejected by affirmative action of the Senate.

In the case of *Dunlap* v. *United States, supra*, we find the following:

> Without questioning the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of a statute passed by that body (United States *v.* Trans-Missouri Freight Association, 166 U. S., 290, 318), it is nevertheless interesting to note that efforts were made in the Senate to amend the bill by the addition of sections which, while making alcohol used in the arts free from tax, sought to secure the Government from fraud by provisions for the methylating of such spirits, so as to render them unfit for use as a beverage; that these proposed amendments were rejected (26 Cong. Rec. 6935, 6936); and that subsequently section 61 was adopted as an amendment, it being urged in its support that "if the Secretary of the Treasury and the Commissioner of Internal Revenue think they cannot adopt any regulations which will prevent fraud, then nothing will be done * * *."

It will be noted that there was affirmative action upon the amendments and that the court in rendering its decision did not rely upon the debates in Congress or upon the thought of one individual in introducing an amendment.

At any rate we cannot see how the introduction of the amendment of Senator Lodge and the subsequent failure of the Senate to act upon the same can give us any light upon the intention of Congress in its use of the terms under consideration.

If the terms used by Congress in the case at bar were ambiguous or indefinite, we might look further into the extrinsic circumstances incident to the passage of the act. Since the terms used are unambiguous, it is not proper to permit such evidence to impeach, destroy, or change the ordinary meaning of the language used, for such procedure would result in subjecting all laws to the hazard of a most uncertain and unreliable rule of interpretation. In the light of this position it is unimportant for us to consider the statements of the chairman and members of the Committee on Ways and Means, the report of the committee, and other evidence of this character.

Tariff laws, while subject to the same rules of construction and legal principles for the most part as other legislative acts, yet have during a century and a half of application acquired certain characteristics not found in other legislation, and certain definite principles of law have been laid down by the courts in construing tariff laws which of necessity do not apply to other kinds of legislation. We think it is well settled that tariff laws generally are framed in the language of men engaged in commerce, and are so framed that they may be understood by them, and that tariff laws are directed to the understanding of the class of citizens who are to operate under them, or who are to be affected by their provisions.—*United States* v. *Davies* (11 Ct. Cust. Appls., 392; T. D. 39317); *Hedden* v. *Richards* (149 U. S., 346, 349).

In the Davies, case, *supra*, the court said:

> Congress is presumed to know the nomenclature and language of commerce. Tariff laws apply especially to men engaged in commerce and are drafted in the words and terms and vocabulary which are in use and understood by the trade. Tariff designations must be held, therefore, to have the sense and meaning assigned to them by trade

> and commerce, and a distinction once made by Congress as to tariff commodities will be presumed to continue in the absence of anything showing a contrary legislative intention.

In the Hedden case, *supra*, the court said:

> In such case, as in the other case, the words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed (p. 350).

In the case of *Elliott* v. *Swartwout* (35 U. S. [10 Pet.], 137), in holding that "worsted" was not woolen goods under the act of 1832, the court said:

> Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. This rule is fully recognized and established by this court, in the case of Two Hundred Chests of Tea, reported in 9 Wheat. 438. The court there say, the object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade. Whether a particular article was designated by one name or another, in the country of its origin, or whether it were a simple or mixed substance was of no importance in the view of the legislature. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic; and it would have been as dangerous as useless to attempt any other classification than that derived

> from the actual business of human life. It being admitted in this instance that worsted is a distinct article, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense and as contradistinguished from wool, and woolen goods, and other well-known denominations of goods (p. 150).

This rule seems not only to be well settled, but to be well grounded in principle. To whom should Congress address its tariff acts? To the populace of the street, who have nothing to do with the subject matter of the legislation? Or, should they be directed to those from whom the Congress expects obedience, and to its officers upon whom its administrative duties fall?

In the question at bar whom will we consult as to the meaning of the term "commonly known as clothing wool"? It has been suggested here that the inquirer should go out into the street and at random ask any English-speaking individual the meaning of the phrase "commonly known as clothing wool." It is urged that this would elicit the answer, "Wool from which clothing is made." It probably would elicit the answer, "I know nothing about the woolen business." But, if perchance, one familiar with growing, selling, importing, exporting, buying, grading, sorting, manufacturing, or handling wool in any way was asked the question, in our judgment he would say, "'Wool, commonly known as clothing wool,' is a wool of short fiber used in the woolen process, and is usually a carding wool." And if he were asked, "What is 'combing wool'?" he would reply that "it was distinguished from clothing wool chiefly on account of its long staple, which permitted it for the most part to be combed." Should interpreters of the act, in

seeking to properly classify a product, and in order to find out the definition of the words used, seek those who know nothing about the different classes of the article? Surely this would be to impute to Congress an absurd intention. Who is it that "commonly" knows clothing wool? The Government's position implies that there is a great class of citizens who are not engaged in the wool trade in any way, and who are not students of the wool question, and who have never consulted the dictionaries, encyclopedias, etc., but who have knowledge on the subject of clothing wool which we need in determining the intent of Congress. The class of people the Government has in mind may know what wool is, but probably have never heard of "clothing wool." Would it not be absurd to declare that Congress intended that the interpreters of the act, in trying to determine its meaning, should go to those who had never heard of the term rather than to those to whom the act was directed, or to those familiar with the use of the term wherever and whenever it is used? We can, therefore, see no additional meaning given to the words "clothing wool" by the use of the words "commonly known as," and in arriving at the conclusion we have considered the fact that it has not been shown in this case that there is any difference or any distinction between what is "commercially" known and what is "commonly" known. Indeed, we can see no difference in the meaning or application of the phrases "commonly known" and "usually known."

Paragraph 362 of the act of 1909 is as follows:

> 362. Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used,

> and also hair of the camel, Angora goat, alpaca, and other like animals.

The corresponding provisions in the acts of 1897, 1890, 1883, and 1867, contained the same phrase, and as far as we know no court or administrative official has held that the phrase "usually known" changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade.

There are cases where the imported article may have a definite commercial designation and yet be commonly known by another name. If in that instance Congress uses the words "commonly known as" in describing the article by a name other than the commercial term, then in construing its meaning, the courts universally hold Congress to have excluded the commercial designation.—*Cadwalader* v. *Zeh* (151 U. S., 171); *Roosevelt* v. *Maxwell* (20 Fed. Cas., 1155). But this is not a case where the commercial designation is relied upon by the importer; a commercial designation is not before us. But even if it were, there seems to be but one understanding as to the meaning of "clothing wool." In the case of *Tiffany* v. *United States* (131 Fed., 398), certain silver handbags or purses were held excluded from paragraph 434, act of 1897, which provided that "articles commonly known as jewelry," etc. Upon the testimony of commercial witnesses, the court said:

> The uncontradicted testimony of witnesses from various branches of trade, including dealers in jewelry, fancy goods, silverware, and of salesmen in department stores, shows that these articles are not commonly known as jewelry, and are not manufactured in jewelry factories, or sold as articles of jewelry.

It seems that this case stands on all fours with the case at bar. There the commercial definition of jewelry as taken from those familiar with the business was held to be the same as was "commonly known."

In *Swan* v. *Arthur* (103 U. S., 597), the court said:

> While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown.

There is certainly no showing in this case that the term "clothing wool" has a common or ordinary use different from its use among commercial men.

It is urged with much force by the Government that Congress intended *in the emergency* to levy duty on all wools except carpet wools, and that this court should declare the combing wool in controversy in this case clothing wool within the *broad* meaning of the act. It is urged that the court is privileged to take into consideration the conditions of commerce and trade on the date of the passage of the statute, the necessity for a protective tariff to be levied on combing wool which was seeking admission into our home market already filled with the home-produced product; that the report of the Tariff Commission before the framers of the law, the statements of members while in committee, and the debates of members of Congress while on the floor should be permitted to override the plain wording of the act in determining the legislative intent. The reasons and arguments set out by the Government in their very forceful brief and oral argument are quite impressive in that direction. After thoroughly considering the history of the legislation, the commercial and trade conditions at the time of its enact-

ment, and the committee's report on the bill, as well as other related documents, we are impressed with the fact that Congress *may* have thought that there was a necessity for levying a duty upon combing wool, and even, we dare to say, some Members of Congress may have felt that section 18 included combing wool. Some of them no doubt did not think that the terms used included combing wool. Some Members may have supported the legislation believing it covered all wool not expressly exempted, while others no doubt supported it because, according to their interpretation of the term, it did not include certain wools. To hold that Congress in its completed enactment, by the use of the words "commonly known as clothing wool" meant to include "combing wool" is to do violence to every rule and canon of construction known to tariff jurisprudence. The courts in construing tariff laws have almost uniformly held that it is the judicial function to construe the language as found in the statute, giving the words used their ordinary meaning, and where the language is plain, that the legislative intent can not be declared to be other than what the ordinary meaning of those words will import in the absence of evidence establishing a commercial meaning different from the ordinary meaning.—*Ringk & Co.* v. *United States* (10 Ct. Cust. Appls., 107; T. D. 38372); *Merck* v. *United States* (151 Fed., 14). In the latter case, the court said:

> The courts can only ascertain the legislative intention by the language used, and it is not their duty by a distorted construction to attempt to cover an article which may have been omitted even by inadvertence (p. 15).

No matter how great the emergency may be for a different construction, or what this court may think of the wisdom of Congress in failing to say "all wool," or to say "clothing wool and combing wool," or "Classes I and II," it would be a far-reaching and dangerous precedent to hold that the author of the bill did not know what he was saying when he introduced the bill, and that the committee did not know what they were reporting when they reported the bill, and that Congress did not know what it was making dutiable when it was enacting the legislation, and that the Executive did not know the meaning of the words in the act when he approved it.

In *United States* v. *Marsching* (1 Ct. Cust. Appls., 216; T. D. 31257), the court said:

> While it is true that every provision of law must be read in the light of all the other provisions of that law, and while it is true that the meaning of Congress, particularly in tariff legislation, must be ascertained in the light of conditions of commerce, and that in this light the language used by Congress must be interpreted, or even in some cases supplied, we do not think that in a case like this where the essential words supporting the construction contended for have been expressly omitted by Congress the courts can by any rule or method of construction read back into the act such words. * * * The fact that some inconsistency may be wrought by this holding, or that some inequalities of duties may be levied, or that some disturbance may be had in the remaining or other provisions, is not a sufficient warrant for the court to read back into the statute language expressly omitted therefrom by Congress. In the opinion of the court the language of the act is plain and unambiguous. The rule is well settled that in the presence of such a provision the court should abstain from interfering with the will of Congress as expressed.

The Supreme Court of the United States in *Bate Refrigerating Co.* v. *Sulzberger* (157 U. S., 1, at p. 37) said, restating an earlier opinion set out in *Scott* v. *Reid* (35 U. S. [10 Pet.], 524):

> Where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.

In *United States* v. *Fisher* (6 U. S. [2 Cr.], 358, 385), Chief Justice Marshall said that where the meaning of the legislature was plain "it must be obeyed."

In *United States* v. *Shing Shun & Co.* (173 Fed., 844), the court said:

> Where the language employed in an act is clear and certain, they [the court] have nothing to do with the reasonableness or justice of the results flowing from according to its natural, usual, and obvious meaning, nor with any supposed policy actuating its framers (p. 847).

The rule is very definitely laid down in *Coles* v. *Collector* (100 Fed., 442) as follows:

> To undertake a departure from the language used would in fact be an unjustifiable assumption by the court of legislative power. It is the duty of the court, where the language is free from doubt or uncertainty, to confine itself to the words of the legislative body that enacted the law, without adding thereto or subtracting anything therefrom.

Now, in the case at bar, having in mind all the evidence and all the definitions in all the books, authorities, and reports, and having before us the use of the terms by Congress in past legislation, is the meaning of the words "clothing wool," or of the phrase "commonly known as clothing wool" free from doubt or uncertainty? Is the definition well settled and free from ambiguity? If these questions are answered in the affirmative, this court has but one duty, and that is to "confine itself to the words of the legislative body."

Since the earliest days of the Republic's legislative life it has been confronted with the problem of levying duty upon wool. Congress has used many different words and phrases with many different meanings in its legislation on that question, and the past acts of Congress show that it possessed scientific and accurate knowledge on the subject. Its woolen schedules have been prepared in the language of, and for the understanding of, those who had acquired special knowledge of the subject matter. Can this court properly hold that in the preparation and passage of the emergency act it departed from all of its previous understanding of the definitions and application of terms, and intended that a different rule of interpretation should be applied to this special piece of legislation? It might be well for a fuller understanding of the legislative history to set out extracts from the various tariff acts of the past:

> *May 19, 1828.*—First. On wool unmanufactured, four cents a pound; * * *
>
> *July 14, 1832.*—First. Wool, unmanufactured * * *
>
> *March 16, 1855.*—* * * pelts; wool; * * * free of duty * * *
>
> *March 3, 1857.*—* * * sheep's wool, unmanufactured, of the value of twenty cents per pound * * * and hair of the alpaca, the goat, and other like animals * * *

March 2, 1861.—Sec. 12. First. —On all wool unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * *Provided*, That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

Sec. 23. Wool, unmanufactured, and all hair of the goat, alpaca, and other like animals, unmanufactured * * *

June 30, 1864.—Sec. 4. On all wool, unmanufactured, and all hair of the alpaca, goat, and other like animals, unmanufactured * * * That any wool of the sheep, or hair of the alpaca, the goat, and other like animals * * *

July 28, 1866.—* * * in determining the dutiable value of merchandise * * * provided further that nothing herein contained shall apply to long-combing or carpet wools * * *

March 2, 1867.—* * * there shall be levied, collected, and paid on all unmanufactured wool, hair of the alpaca, goat, and other like animals * * * All wools, hair of the alpaca, goat, and other like animals, as aforesaid, shall be divided, for the purpose of fixing the duties to be charged thereon, into three classes, to wit:

Class 1. Clothing wool. That is to say, merino, mestiza, metz, or metis wools or other wools of merino blood, immediate or remote; down clothing wools and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from * * * and also including all wools not hereinafter described or designated in classes two and three.

Class 2. Combing wool. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, or other like combing wools of English blood, and usually known by the terms herein used; and also all hair of the alpaca, goat, and other like animals.

Class 3.—Carpet wools, and other similar wools. Such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere.

June 6, 1872.—Sec. 2. On all wools, hair of the alpaca, goat, and other like animals and all manufactures wholly or in part of wool or hair of the alpaca and other like animals, except as hereinafter provided (90 per cent. of duty of 1867, the tax imposed being 90 per cent. of the then existing duty).

March 3, 1883.—Schedule K.—Wool and woolens. All wools, hair of the alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

Class one, clothing wools. That is to say, * * * (Same as in 1867).

Class two. Combing wools. That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat and other like animals.

Class three. Carpet wools, and other similar wools. (Same as in 1867.)

October 1, 1890.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

Class one. That is to say * * * (Same as in 1883.)

Class two. That is to say * * * (Same as in 1883.)

Class three. That is to say, Donskoi, native South American, Cordova, Valparaiso, native

Smyrna, Russian camel's hair, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools hereinafter provided for.

August 27, 1894.—Free list. Par. 685. All wool of the sheep, hair of the camel, goat, alpaca, and other like animals, and all wool and hair on the skin, noils, yarn waste, card waste, bur waste, slubbing waste, roving waste, ring waste, and all waste, or rags composed wholly or in part of wool, all the foregoing not otherwise provided for.

July 24, 1897.—All wools, hair of the camel, goat, alpaca, and other like animals shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes:

Class one, that is to say, merino, mestiza, metz, or metis wools, or other wools of Merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including Bagdad wool, China lamb's wool, Castel Branco, Adrianople skin wool or butcher's wool, and such as have been heretofore usually imported into the United States * * * and all wools not hereinafter included in classes two and three.

Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, Angora goat, alpaca, and other like animals.

Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

August 5, 1909.—360. All wools, hair of the camel, goat, alpaca, and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon into the three following classes:

361. Class one, that is to say, merino * * *
(Same as in 1897.)

362. Class two, that is to say, Leicester * * *
(Same as in 1897.)

363. Class three, that is to say, Donskoi * * *
(Same as in 1897.)

October 3, 1913.—Free list. Par. 650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by Schedule K of the existing law shall remain in full force and effect.

Nowhere in the century and a quarter gone will you find in its written word, in woolen tariff legislation, anything to indicate that Congress did not fully understand the meaning of its words, or that it did not apply and carefully select them with a view to informing those to whom the law was directed exactly what kind of merchandise they were to deal with. We are not unmindful of the rules invoked by the Government that the intent of the law is the law, and that courts must not impute to the legislature the doing of a ridiculous, vain, or absurd thing. If the words used were susceptible of more than one reasonable construction we would have a different question. For this court to hold that the phrase "commonly known as clothing wool" embraces and includes "combing wool" would be for this court to legislate, and thereby usurp the functions of Congress. From many viewpoints this might be desirable in this case, but it would be embarking upon a very dangerous and un-

certain course, which precedent, if followed, would lead to disastrous consequences. The rule laid down in *Elliott* v. *Swartwout, supra,* in our judgment should be followed, and a strict adherence to this principle, which, for the most part, has been adhered to in the past, will be conducive to the best understanding of and fullest compliance with the purposes of legislation.

If we expect proper respect for laws and a compliance with their provisions; if we hope for a proper understanding in the administration of them, the meaning justified by the words used must not be overthrown by extrinsic circumstances. We hold that when Congress used the phrase "commonly known as clothing wool," it knew that there was a definite kind of wool known to its citizens who were familiar with the question as "clothing wool," and that it must be declared to have intended the ordinary and usual meaning of its words. Clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on date of the entry, was on the free list of the act of 1913. The protests should have been sustained. The judgment of the Board of General Appraisers is *reversed.*

[Rehearing denied February 9, 1921.]

BLAND, Judge: Replying to the Government's brief, on petition for rehearing, importers have conceded, as the Government claims, that Exhibit 15 was not combing wool but was clothing wool. The opinion of this court in this case, we think, is sufficiently clear to indicate how Exhibit 13 should be classified, but to obviate any doubt on the question as to how it should be classified, we find that Exhibit 13 was in fact clothing wool.

Accordingly the judgment heretofore entered by the court is modified so as to affirm the judgment of the Board of General Appraisers with respect to the merchandise represented by Exhibit 13. In all other particulars our former judgment is reaffirmed, and the petition for a rehearing is denied.

SIPONED TO MERITS
Oct 25 1926
Sep 15 1926
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1926

THE UNITED STATES
Petitioner

v.

STONE & DOWNER CO., and LOWE DONALD & CO.
Respondents

No. 150
On Writ of Certiorari to the United States Court of Customs Appeals

MOTION TO DISMISS OR AFFIRM
with
BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

EDWARD P. SHARRETTS
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IN THE

Supreme Court of the United States

OCTOBER TERM—1926.

THE UNITED STATES,
Petitioner,

v.

STONE & DOWNER CO., and LOWE DONALD & CO.,
Respondents.

No. 150.

On Writ of Certiorari to the United States Court of Customs Appeals.

MOTION TO DISMISS OR AFFIRM.

Now come the above named respondents, by their counsel appearing in their behalf, and move this Honorable Court to dismiss the Writ of Certiorari heretofore granted by this Court on October 12, 1925 (United States *v.* Stone & Downer *et al.*, 269 U. S., 542), or in the alternative to affirm the judgment below.

The Facts.

1. On August 2, 1926, after the Writ of Certiorari was granted, there was filed with this Court and copies thereof printed in the record (R. 108-126), certified copies of the opinion and final judgment of the Court of Customs Appeals in a prior suit involving exactly similar importations, which has never been reversed nor modified wherein every question raised by the present suit was adjudicated between the present parties. The said prior decision is reported in Stone & Downer *v.* United States, 12 Ct. Cust. Appls., 62. Suit 2245.

2. The record in the earlier suit (No. 2245) was part of the present record in the Courts below and their decisions in the present case were based upon the decision of the Court of Customs Appeals in the prior suit.

3. No effort was made to obtain a review of the decision of the Court of Customs Appeals in the prior case and the time has expired within which a review could be sought.

The Grounds for the Motion Are:

1. The Writ of Certiorari should be dismissed because the present respondents obtained a final judgment in their favor which has never been reversed nor modified, against the present petitioner in a prior suit, in which the present question was distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery and cannot be disputed in this second suit between the same parties.

2. The judgment of the Court of Customs Appeals should be affirmed because its correctness is conclusively established by its prior decision upon the same question and further argument is needless and could serve no purpuse other than delay.

EDWARD P. SHARRETTS,
Attorney for Respondents.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

Judgments and Opinions Below.

The judgment of the Court of Customs Appeals in the present suit is printed in the record (R. 407), the opinion is printed (R. 402) and is reported in United States *v.* Stone & Downer Co., 12 Ct. Cust. Appls., 557. The judgment of the Board of General Appraisers affirmed thereby is printed (R. 401). The opinions of the Board are printed (R. 397-400) and reported in Treasury Decision 40368.

The Judgment of the Court of Customs Appeals in the prior suit (No. 2245) which is claimed here to be *res judicata* is printed (R. 426). The opinion is printed (R. 409) and reported in Stone & Downer Co. *v.* United States, 12 Ct. Cust. Appls., 62.

Authority and Precedents for the Motion.

The present motion is made under Rule 6, paragraphs 4 and 5 of the Revised Rules of this Court.

Relative to petitions for certiorari, this Court, speaking through Mr. Justice McReynolds, has said: *"Petitions of this character are at the risk of the party making them, and whenever in the progress of the cause facts develop which, if disclosed on the application would have induced a refusal, the Court may upon motion by a party or ex Mero Motu dismiss the writ."* *Furness, Withy & Co.* v. *Yang-Tsze*, 242 U. S., 430, 431. *"Obviously it is impossible for us critically to examine so many records before ruling upon applications and we must rely very largely upon preliminary papers. Unless the requirements specified in Furness, Withy & Co.* v. *Yang-Tsze Insurance Ausocia-*

tion are observed we cannot hope properly to dispose of an increasing docket." Southern Power Co. v. *Pub. Serv. Co.*, 263 U. S. 508, 509. See also *Layne & Bowler Corp.* v. *Western Well Works*, 261 U. S. 387, 393, and *United States* v. *Rimer*, 220 U. S. 547.

Statement.

The present suit, which in the Court below was Suit No. 2463 and in this Court No. 150, had its origin in protests filed by the respondents against the action of the Collector of Customs at the port of Boston in classifying certain importations of wool, yarn and cloth in paragraphs 18 and 19 of the Emergency Tariff Act of May 27, 1921 (42 Stat. 9, 10).

The protests were filed and later reviewed by the Board of United States General Appraisers and the United States Court of Customs Appeals under the procedure provided in Paragraph N, Section III of the Tariff Act of October 3, 1913 (38 Stat. 114, 187).

The decision below of the Court of Customs Appeals affirmed a judgment of the Board of General Appraisers which sustained the claims in the protests. The Writ of Certiorari from this Court, the dismissal of which is here prayed for, was sought and allowed under Section 195 of the Judicial Code, as amended August 22nd, 1914, c. 267, 38 Stat. 703, a certificate of importance having been filed by the Attorney General prior to the decision of the Court of Customs Appeals. The respondents filed a brief in opposition to the granting of the writ.

The wool, yarn and cloth was imported and entered at the port of Boston at various dates during the years 1921 and 1922, when the Tariff Act of October 3, 1913 (38 Stat. 114) and the Emergency Tariff Act of 1921 were in effect.

Paragraph 650 of the Act of 1913 (38 Stat. 114, 164) placed on the free list all *"wool of the sheep."* Paragraph 18 of the Emergency Act modified paragraph 650 of the 1913 Act by directing an assessment of duty upon one class of sheeps wool, to wit: *"wool, commonly known as clothing wool,"* leaving all other classes of sheeps wool free under paragraph 650 of the 1913 Act. Paragraph 19 of the Emergency Act required certain emergency duties, in addition to those required by the Act of 1913, on *"manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value."*

The protestants claimed that the wool imported by them was not "wool, commonly known as clothing wool" and therefore not subject to the duty provided in paragraph 18 of the Emergency Act, but was free of duty under paragraph 650 of the Act of 1913; that the yarn and cloth were not composed in chief value of "wool, commonly known as clothing wool" and therefore not subject to the additional duty provided in paragraph 19 of the Emergency Act.

The issue presents two controlling questions: 1st: *Is the wool at bar as represented by Exhibits 1 to 12 "wool, commonly known as clothing wool?* 2nd: *Are the yarns and cloth as represented by Exhibits 14 and 15, manufactures of "wool, commonly known as clothing wool?"*

Exhibits 1 to 12 consist of 12 samples of wool marked Exhibits 1 to 12. Exhibit 14 is a sample of yarn. Exhibit 15 is a sample of cloth. The same exhibits had been used in a prior suit (No. 2215) involving precisely similar importations of wool, yarn and cloth in which the United States and the present respondents were parties and in which suit the Court of Customs Appeals had rendered a final judgment in favor of the present respondents (in

that case the appellants) on the same questions that are raised in the present suit. Stone & Downer *v.* United States, 12 Ct. Cust. Appls. 62, Suit 2215. That judgment has never been reversed nor modified. The said Exhibits and the record in the prior suit (No. 2215) were introduced into the present suit by agreement made in open court when the present suit was before the Board of General Appraisers (R. 20).

Respondents rested upon the agreement and record so made (R. 20).

The Government introduced the testimony of five witnesses who had not testified in the prior suit (R. 21-77). The respondents introduced one witness in rebuttal (R. 77).

Upon the record so made the Board of General Appraisers sustained the protests on the authority of the decision of the Court of Customs Appeals in the prior suit (No. 2215). (R. 397-401). The Government appealed to the Court of Customs Appeals where the judgment of the Board was affirmed on the authority of the prior decision of that Court in Suit 2215 (R. 402-407).

The transcript of record filed with this Court at the time the petition for certiorari was made contained the testimony of the nineteen witnesses who had been examined in the prior suit (2215) and the judgment of the Board of General Appraisers in that suit, which was adverse to the protestants. It did not, however, contain the final judgment of the Court of Customs Appeals in that suit which reversed the decision of the Board of General Appraisers and affirmed the protestants' contention as to all the merchandise excepting that represented by Exhibit No. 13.

On August 2, 1926, certified copies of the final judgment and Opinion of the Court of Customs Appeals in Suit 2245 were filed with this Court under an agreement of counsel. Copies of the agreement, judgment and Opinion are now printed in the present record (R. 408-426).

The respondents in the present motion to dismiss the Writ of Certiorari contend that the final judgment in Suit 2245 adjudicated the questions now raised by the present suit and is conclusive as to those questions between the present parties.

The relationship between the present suit and the prior Suit 2245 appears throughout the record and in the opinions, briefs and arguments in the Courts below.

Suit 2245 was made up as a test case to try out the present issue and involved seven protests selected for that purpose (R. 114). A comprehensive record was made. Nineteen witnesses were examined as to whether the wool as represented by the exhibits was or was not known as "clothing wool." Eleven of these witnesses were called by the Government (R. 117-365). Upon the record so made the Board of General Appraisers, one member dissenting, overruled the protests and entered judgment in favor of the Government (R. 365-397). The protestants appealed to the Court of Customs Appeals (R. 91). Under Section 195 of the Judicial Code, as amended, it was the right of the Attorney General to file a certificate, prior to the decision of the Court of Customs Appeals, to the effect that the case was of such importance as to render expedient its review by the Supreme Court, and thus make it possible for either party, after the decision of the Court of Customs Appeals, to apply to this Court for a Writ of Certiorari. The Attorney General elected not to file the certificate of importance. The Court of Customs Appeals in

a unanimous decision of its five judges, reversed the decision of the Board as to all the merchandise excepting that represented by Exhibit 13. See final judgment (R. 426).

The Government asked for a rehearing but its petition was denied. Stone & Downer *v.* United States, 12 Ct. Cust. Appls. 78.

The final judgment of the Court of Customs Appeals in Suit 2245 has never been reversed nor modified.

While Suit 2245 was pending in the Court, many protests, raising the same questions, reached the Board of General Appraisers and were placed upon the suspended file of the Board to await the final disposition of Suit 2245.

On May 28, 1924, more than three months after the Court of Customs Appeals had entered its final judgment in Suit 2245, the five protests which make up the present suit were taken from the suspended files and called for trial before the Board of General Appraisers (R. 20). As already shown, the protestants introduced the record and exhibits in suit 2245 and the agreement relative thereto and rested (R. 20). The subsequent proceedings culminating in the Writ of Certiorari from this Court have already been set forth above.

The following extracts from the opinion and final judgment of the Court of Customs Appeals in Suit 2245 indicate the questions presented and decisions thereon.

In the opinion Judge Bland speaking for the Court of Customs Appeals in Suit 2245 said (R. 409, 425) (*Stone & Downer Co.* v. *United States,* 12 Ct. Cust. Appls. 62, 63, 77, 78):

"The merchandise covered by this appeal consists of wool, worsted yarn, and worsted cloth. The wool was assessed for duty under paragraph 18 of the Emergency Tariff Act of 1921, reading 'wool commonly known as clothing wool.' Appellant claim that the wool in question is combing wool, and that the yarn and cloth are made from combing wool. The yarns and cloth were assessed for duty under paragraphs 287 and 288 of the Act of 1913, and in addition 45 cents per pound under paragraph 19 of the Emergency Act. It is the contention of the importers that combing wool is not included in paragraph 18, and that their importation falls under the free list of the Act of 1913, paragraph 650."

* * * * * * *

"We hold that when Congress used the phrase 'commonly known as clothing wool' it knew that there was a definite kind of wool known to its citizens who were familiar with the question as 'clothing wool' and that it must be declared to have intended the ordinary and usual meaning of its words. Clothing wool does not embrace combing wool. Combing wool, and products made therefrom, are the goods in controversy. Combing wool, on date of the entry, was on the free list of the Act of 1913. The protests should have been sustained. The judgment of the Board of General Appraisers is reversed."

The Court of Customs Appeals in its final judgment in Suit 2215 held (R. 126):

"* * * The judgment of the Board of United States General Appraisers, in so far as it relates to the merchandise represented by exhibit numbered 13, be, and the same is hereby affirmed; and that as to all other merchandise covered by said appeal

said judgment be and the same is hereby, reversed, and said merchandise is held not to be dutiable under the Emergency Tariff Act of 1921, but to be free of duty or dutiable at the appropriate rates of the tariff act of 1913; and said appeal is remanded to said Board for proper action in the premises."

The following extracts from the opinion and judgment of the Courts below in the present suit indicate the questions here presented.

From the opinion of the Court of Customs Appeals (R. 402, 407) (*United States* v. *Stone & Downer Co.*, 12 Ct. Cust. Appls. 557, 558, 563):

"At the trial below it was stipulated that the wool covered by protests 945882/11410, 945938/11385, and 956790/11920 is in every essential and material respect the same as Exhibits 1 to 12, inclusive, in Suit No. 2245, decided by the United States Court of Customs Appeals in Stone & Downer Co. *et al. v.* United States (12 Ct. Cust. Appls.—; T. T. 40019), dated November 17, 1923 (45 Treas. Dec. 167), and that the yarn covered by protest 950777/11585 consists of worsted yarn and is in every essential and material respect the same as Exhibit 15 in said Suit No. 2245.

It was further stipulated that the cloth covered by protest 949137/11507 consists of worsted cloth made from worsted yarn and is in every essential and material respect the same as Exhibit 14 in said suit No. 2245.

It was also stipulated that the record in said suit No. 2245, including the exhibits, shall be made a part of the record in this case.

Exactly the same questions are here involved as were before the court in the Stone & Downer case, *supra*. Some new evidence was introduced by both

> sides with reference to the meaning of 'clothing wool.' The new evidence throws no new light on the case, except that a reading of it confirms us in the opinion that wherever and whenever clothing wool is spoken of by anyone knowing the meaning of the term it means a short-stapled wool used in the carding process as distinguished from combing wool, which is used in the combing or worsted process."
>
> * * * * * * *
>
> "The opinion in Stone & Downer case, *supra,* is sufficiently replete with authorities on all questions raised to obviate repetition here. The judgment of the Board of General Appraisers is affirmed."

From the judgment of the Court of Customs Appeals in the present case (R. 407):

> "Ordered that the judgment of the Board of United States General Appraisers be, and the same is hereby, affirmed."

From the Judgment of the Board (R. 401):

> "It is hereby ordered, adjudged, and decreed this 9th day of September 1924, that the protests in this case, claiming certain combing wool in protests 945882, 945938 and 956790 to be free of duty under paragraph 650, Act of 1913, and certain yarn in protest 950777, to be dutiable at only 18 per cent ad valorem under paragraph 287, act of 1913, and certain wool cloth in protest 949137 to be dutiable at only 35 per cent under paragraph 290 of said act, are sustained, and the collector of customs at the port of Boston will reliquidate the entries accordingly."

Three short opinions were written by the three members of the Board pointing out that the questions presented in the present suit were the same as those decided by the Court of Customs Appeals in the earlier case (R. 397-400).

ARGUMENT.

I.

The Writ of Certiorari should be dismissed because the present respondents obtained a final judgment in their favor which has never been reversed nor modified, against the present petitioner, in a prior suit, in which the present question was distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery and cannot be disputed in this second suit between the same parties.

1. *The parties to the present suit were parties in Suit 2245 decided in Stone & Downer Co.* v. *United States,* 12 Ct. Cust. Appls. 62.

The final judgment of the Court of Customs Appeals in Suit 2245 (R. 426) names the following parties as appellants: Stone & Downer Co., John R. Conkey, J. A. Karnheim and Lowe, Donald & Co.—The United States is named as appellee.

The final judgment of the Court of Customs Appeals in the present suit (R. 401, 407) names the United States as appellant and the following as appellees: Stone & Downer Co. and Lowe, Donald & Co.

The repetition of the same names in the two judgments, in itself, there being no evidence to the contrary, is presumptive proof that the parties are the same—*Fowler* v. *Stebbins,* 136 Fed. 365, 366. The official reports of the Collector of Customs in the record show that Stone & Downer Co. was the importer in the case of three importations of wool and one importation of yarn in Suit 2245 (R. 95-105), and the importer of the importations of wool and yarn in the present suit (R. 7-16); that Lowe,

Donald & Co. were the importers of one importation of cloth in Suit 2215 (R. 113, 114), and the importers of the cloth in the present suit (R. 18, 19).

Paragraph B. Section 3, Tariff Act 1913 (38 Stat. 181) which is a re-enactment of similar provisions of virtually all prior tariff acts, provides: *"That all merchandise imported into the United States shall, for the purpose of this Act, be deemed and held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof*: * * *." The present respondents were the consignees as thus defined and were personally liable to the United States for the duties. *Meredith* v. *United States*, 13 Pet. 486, 493; *United States* v. *Vandiver*, 133 Fed. 252; *Baldwin* v. *United States*, 113 Fed. 217; *United States* v. *Bishop*, 125 Fed. 181. They were, therefore, so far as the protested duties were concerned, the direct parties in interest.

2. *The importations covered by the present suit are of exactly the same character as those covered by the prior suit.*

When the present suit was before the trial court (Board of General Appraisers) it was conceded that the merchandise in both suits was exactly alike and it was agreed that the same set of exhibits used to represent the merchandise in suit 2245 should be accepted as representing the present importations. Counsel for the Government said relative to that agreement (R. 20):

> Mr. Lawrence: That is agreed to, we having submitted the invoices to the appraiser at Boston, who confirms the identity of the merchandise under protest with that in suit 2245.

3. *The point in question presented for determination in the present suit is the same as that litigated and determined in suit 2245.*

The only provision of the Emergency Act under which the wool at bar could be assessed for duty, was contained in the six words of Paragraph 18, to wit: *"wool, commonly known as clothing wool."* Recovery in both suits, therefore, depends upon the adjudication of the same question—is the wool represented by Exhibits 1 to 12, "wool, commonly known as clothing wool"? In the case of the cloth and yarn represented in both suits by Exhibits 14 and 15 they are made from wool of the same character as that shown by Exhibits 1 to 12 and the petitioner frankly admits in his petition for certiorari (page 9), that their classification in paragraph 19 of the Emergency Act automatically depends upon the adjudication of the same question.

The assignment of errors dealing with the vital question at issue in the Government's appeal from the Board of General Appraisers in the present suit—assigned errors 3 to 12—(R. 1, 2), are the exact converse of the errors relative to the same question in the prior suit (2245) in which the present respondents were appellants—assigned errors 3 to 12—(R. 92).

In the opinion below, in the present suit, Judge BLAND, speaking for the Court of Customs Appeals, after referring to the earlier case said (R. 402): *"Exactly the same questions are here involved as were before the court in the Stone & Downer case, supra."*

The Government did not dispute that finding in its petition for the writ of certiorari. On the contrary at page 7 of the petition, the petitioner in referring to the earlier case, said: *"As a preliminary statement it may*

well be pointed out that the dutiable status of similar importations of wool was originally presented to the Court of Customs Appeals in the case of Stone & Downer Co. et al. v. *United States,* 12 Ct. Cust. Appls. , T. D. 40019, 45 Treas. Dec. 167." And at page 8 of the petition in referring to the earlier case, says: *"That case, like the instant one, was instituted by protests which were filed against the decisions of the collector of customs at Boston in classifying importations similar to those in the case at bar under the provisions of paragraphs 18 and 19 of the Emergency Tariff Act."*

Nowhere, in his petition or elsewhere, has the petitioner contended that the present suit involves a different question than that decided by the Court of Customs Appeals in the prior suit. The clear purpose of the Government in appealing the present case from the Board of General Appraisers was not to raise a new issue, but rather, to create the opportunity to file a certificate of importance prior to the decision of the Court of Customs Appeals, and, if possible, obtain in this Court a review of the precise issue finally decided by the Court of Customs Appeals in the earlier suit. A petition for certiorari was not made in the earlier suit because the Attorney General had not filed a certificate of importance, prior to the decision of the Court of Customs Appeals, as required by Section 195, of the Judicial Code, as amended. It is well settled in this Court, however, that the existence or non-existence of a right, in either party, to have the judgment in a prior suit re-examined by a higher court, cannot, in any case, control the inquiry as to the conclusiveness of the judgment in the prior suit between the same parties. *Johnson Co.* v. *Wharton,* 152 U. S. 252, 261.

4. The additional testimony introduced in the present suit did not raise any new question, nor does it change the facts.

In its petition for the writ of certiorari the Government at page 8 of the petition in effect admits that the additional testimony in the present suit is merely cumulative. Thus petitioner says:

> "* * * while the record in the former case was incorporated and made part of the record herein, a great deal of additional testimony was introduced in the present case to substantiate that introduced by the Government in the former case, as already pointed out."

In the opinion below of the Court of Customs Appeals, Judge BLAND speaking for the Court said with reference to the additional testimony (R. 402):

> "The new evidence throws no new light on the case, except that a reading of it confirms us in the opinion that wherever and whenever clothing wool is spoken of by anyone knowing the meaning of the term it means a short-stapled wool used in the carding process as distinguished from combing wool, which is used in the combing or worsted process."

General Appraiser Sullivan in the opinion of the Board of General Appraisers below says with reference to the additional testimony (R. 399):

> "Sullivan, General Appraiser: in the foregoing cause considerable testimony was introduced in addition to that contained in the original case, Stone & Downer Co. *et al. v.* United States, G. A. 8613 (T. D. 39473, 43 Treas. Dec. 141).
>
> "The additional testimony, in my judgment, does not change the facts."

5. *The final unmodified judgment of the United States Court of Customs Appeals in a prior suit between the present parties having adjudicated the questions presented in the suit brought to this Court by the present writ, there is no question on the merits left open for argument in this Court and the Writ should be dismissed.*

The present suit is a second action brought by the same importers to recover customs duties paid under the same law on the same class of articles. Where different actions are brought by the same plaintiff to recover taxes paid under protest under the same law on the same class of articles, a judgment in one case is conclusive in the others as to all such matters as were actually and necessarily litigated and decided therein and thereby. *Johnson & Johnson* v. *Herold*, 161 Fed. 593, 601, 602. Affirmed by the Circuit Court of Appeals, Third Circuit, and the above rule approved in *Rutan* v. *Johnson & Johnson* and *Herold* v. *Same*, 231 Fed. 369, 375.

The Johnson & Johnson litigation is very similar to the present. Successive protests against Internal Revenue stamp taxes, imposed at different periods upon like classes of articles, manufactured by the plaintiffs, were made the subject of 18 different suits. The controversy called in question the Treasury Department's construction of the language of Sec. 20 and Schedule B. of the War Revenue Act of June 13, 1898 (30 Stat. 456, 462, c. 448).

Two of the suits were decided in favor of the plaintiffs in the United States Circuit Court by Judge Archbald, one of which was against Rutan, Collector (*Johnson & Johnson* v. *Rutan*, 122 Fed. 993), the other against Herold, Collector (*Johnson & Johnson* v. *Herold*, 123 Fed. 409). Writs

of error were sued out upon the judgments, but were dismissed by the Circuit Court of Appeals because not filed in time (130 Fed. 109).

The remaining 16 suits were brought at the same time in the Circuit Court before Judge Cross. The opinion is reported in *Johnson & Johnson* v. *Herold*, 161 Fed. 593, *supra*. In holding that the questions decided in the two earlier suits were *res judicata*, Judge Cross says at page 602 of the opinion: *"The stamps were all imposed under the same act, upon like classes of articles between the same parties and during successive periods of time."*

Judge Cross' decision was later reviewed and affirmed by the Circuit Court of Appeals in *Rutan* v. *Johnson*, 231 Fed. 369, *supra*. Judge McPherson, speaking for the Circuit Court of Appeals, said at page 375 of the opinion: *"It is unnecessary to cite authorities for the proposition that the judgments in the two cases before Judge Archbald operated by way of estoppel to prevent the government from reexamining in the present suits the same or, essentially the same, questions that he had previously decided."*

The principles of *res judicata* applied by the Circuit Court and Circuit Court of Appeals in the Johnson & Johnson cases, *supra*, are well settled in this Court. *"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a Court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact, once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit re-*

mains unmodified." *Southern Pacific R. R. Co.* v. *United States*, 168 U. S. 1, 48; *Deposit Bank* v. *Frankfort*, 191 U. S. 499, 513, 514; *Cromwell* v. *County of Sac.*, 94 U. S. 351, 353.

In the prior suit, between the present parties (*Stone & Downer Co., et al.* v. *United States*, 12 Ct. Cust. Appls. 62, Suit 2245) it was decided that wool represented by Exhibits 1 to 12 was "combing wool" and not "wool, commonly known as clothing wool," as provided for in paragraph 18 of the Emergency Tariff Act of 1921; that yarn and cloth represented by Exhibits 14 and 15 are manufactures of combing wool and not the manufactures described in paragraph 19 of the same act. Final judgment was entered (R. 126), which has never been reversed nor modified. The decisions upon those questions are not merely enunciations of rules of law. The questions are not unmixed questions of law. They constitute facts, questions or rights distinctly adjudged and cannot be disputed in a subsequent action between the same parties, even if the determination of the questions was reached upon an erroneous view or by an erroneous application of the law. *United States* v. *Moser*, 266 U. S. 236, 242.

In United States *v.* Moser, *supra*, the question, the adjudication of which in an earlier case was held to be *res judicata*, was whether services at the Naval Academy constitutes "service during the Civil War" within the meaning of the provision of paragraph 11 of the Navy Personnel Act of March 3, 1899, c. 413, 30 Stat. 1004, 1007 as follows: "That any officer of the Navy with a creditable record, who served during the Civil War, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade". This Court decided that this was not an unmixed question of law and that an adjudication on

this question by the Court of Claims was conclusive in future actions between the same parties upon different demands.

In the present suit the wool, yarn and cloth are conceded to be in every essential and material respect the same as the exhibits passed upon in the prior suit (No. 2245), and the same exhibits were introduced into the present suit by agreement as representative of the wool, yarn and cloth (R. 20). The controversy here, as was true in the prior suit, turns upon whether the wool represented by Exhibits 1 to 12, is "Wool, commonly known as Clothing Wool" and whether the yarns and cloth represented by Exhibits 14 and 15 are manufactures of such wool. The decision on those questions in the earlier suit between the present parties must be accepted in this second suit as irrefragable truth. *Washington, Alexandria & Georgetown Steam, Packet* v. *Sickles*, 24 How. 333, 343.

The additional testimony introduced in the present suit (R. 21-91) is simply cumulative.

However strong the new evidence might be in support of the Government's contention, it would be contrary to the well settled rule of *res judicata*, to go behind the former adjudication, and deny to the respondents the benefit of the rule making that adjudication, so long as it was unmodified, conclusive, as between the parties to it, of all matters actually determined under the issues in the prior suit. *Southern Pacific R. R. Co.* v. *United States*, 168 U. S. 1, 62, 65; *Smith* v. *Town of Ontario*, 4 Fed. 386, 391.

In *United States* v. *Southern Pacific Railroad Co.*, 146 U. S. 570, the Government had sued to cancel the patents issued to the Southern Pacific Railroad and annul its title to certain lands at the intersection of the Southern Pacific and Atlantic & Pacific Railroads.

The Government claimed that title to the land remained in the Atlantic & Pacific Railroad until it was forfeited to the Government by act of Congress and that the Southern Pacific Railroad never acquired title to the land in dispute.

The controversy turned upon the validity of certain maps of location which had been filed in the land office by the Atlantic & Pacific Railroad, and which included the land in question. It was held that the maps were valid and the case went against the railroad. The United States later brought suit against the Southern Pacific Railroad in the United States Circuit Court to quiet its title to other lands specified on the same maps and introduced in evidence the record in the prior case. The railroad introduced considerable new evidence in the later case tending to show that the maps were but fraudulent pretenses and did not show the forfeited lands. Judge Rose in the Circuit Court said, "In my opinion, the evidence in the present case shows that to be true." (*United States* v. *Southern Pacific Railroad Company*, 62 Fed. 531, 534), but followed the decision of this court in the earlier case. This judgment was affirmed by the Circuit Court of Appeals in *Southern Pacific Railroad Company* v. *United States*, 69 Fed. 47. The question of *res judicata* was not considered in the lower courts. The case was appealed to this Court and decided in *Southern Pacific Railroad Company* v. *United States*, 168 U. S. 1, *supra*. The railroad claimed that the introduction of new evidence in the case eliminated the question of *res judicata* and further that the new evidence raised questions not decided in the former case as to the validity of the maps of location (168 U. S. 12, 13). As to this point Mr. Justice Harlan speaking for this Court, said at page 65 of the

opinion: *"Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or the other. The application to consider that evidence is practically an application for a rehearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of res judicata. Without, therefore, expressing any opinion as to the effect of this new evidence relative to matters once finally adjudged, we hold that the Southern Pacific Railroad Company cannot, in this proceeding, question the validity of those maps as maps of definite location."*

It having been conceded that the wool, yarn and cloth in the present suit are in every essential and material respect the same as the wool, yarn and cloth in the prior suit (R. 20), the fact that the two suits cover different importations does not impair the conclusiveness of the prior decision upon the questions common to both suits.

In *Johnson & Johnson* v. *Herold, supra,* the different actions did not involve the same identical articles. They involved the same class of articles. In *Southern Pacific R. R. Co.* v. *United States, supra,* the lands covered by the two suits were different although equally affected by the questions at issue. A judgment of the United States Circuit Court holding that certain guard rails were covered by a patent, known as the Wharton patent, was held to be conclusive in a subsequent action between the same parties involving *similar* rails. *Johnson Co.* v. *Wharton,* 152 U. S. 252, *supra.* A judgment holding property exempt from taxation concludes the State in suits brought for taxes of other years under the same law. *New Orleans*

v. *Citizen's Bank*, 167 U. S. 371, 396, 398; *Baldwin* v. *Maryland*, 179 U. S. 220, 222; *Deposit Bank* v. *Frankfort*, 191 U. S. 499, 513; *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273, 291. In holding a judgment in favor of a bondholder upon certain municipal bonds to be conclusive in a second suit on other bonds of the same issue, this Court, speaking through Mr. Justice SWAYNE said: *"The court had full jurisdiction over the parties and the subject. Under such circumstances a judgment is conclusive not only as to the res of that case, but as to all further litigation between the same parties touching the same subject matter, though the res itself may be different."* *Beloit* v. *Morgan*, 7 Wall. 619, 622. See also *Aurora* v. *West*, 7 Wall. 82, 96, and *Washington, Alexandria and Georgetown Steam Packet* v. *Sickles*, 24 How. 333, 342. In the later case of *Cromwell* v. *County of Sac*, *supra*, it was held that where the second suit is upon a different claim or demand, the doctrine stated in *Beloit* v. *Morgan* and *Aurora* v. *West*, *supra*, applies only to the right, question or fact distinctly put in issue and directly determined in the prior suit, as a ground of recovery. To that extent the doctrine has been consistently followed and will be found to run through nearly all the American cases. *Black on Judgments*, 2nd Edition, §506. The application of the rule, in so far as the *res* is concerned, is well illustrated in a patent case decided by the United States Circuit Court of Appeals, First Circuit, where it was held that where a second action growing out of an interference proceeding involves the same identical articles covered by a former judgment there is a complete bar to the commencement of a second action and where the articles in the second action are not the same articles there is no bar to the commencement of the second action, but under

the doctrine stated in *Cromwell* v. *County of Sac, supra,* every question decided in the first case is *res judicata* if it arises again in the second action between the same parties. *Sutton* v. *Wentworth,* 247 Fed. 493, 501, 502.

In the petition for certiorari the petitioner (page 5) specifies five errors which he alleges were made by the Court below. The first assigned error is to the effect that the Court erred in holding that the wool at bar is not "wool, commonly known as clothing wool." In the other four assignments petitioner alleges that the Court below disregarded decisions of this Court in declining to review the history of the times when the Emergency Act was passed; that it disregarded rules of construction; that it improperly applied testimony and that it did not give due force to testimony introduced by the Government. On page 6 of the petition the petitioner calls attention to the number of suits awaiting the outcome of this one and the estimated amount involved and asks this Court to review the case because of its importance in disposing of the suits pending.

Obviously this Court could not give the petitioner the relief sought in the instant case without holding that the wool represented by Exhibits 1 to 12 is in fact "wool, commonly known as clothing wool." But the prior judgment in Suit 2245 is conclusive to the contrary and every defence requiring the negation of what was there decided is met and overthrown by that adjudication. *Lumber Co.* v. *Buchtel,* 101 U. S. 638, 639. With that question decided all other propositions raised by the petitioner become merely moot questions. It could not help the petitioner in the instant case to show that the determination which is *res judicata* was reached upon an erroneous view or by an erroneous application of the law. *United*

States v. *Moser*, *supra*, page 242. Even if it could be shown to be wrong, not having been reversed, it is *res judicata*. *North Carolina Railroad Co.* v. *Story*, 268 U. S. 288, 292. It may be as claimed by petitioner that the various questions of statutory construction, weight of evidence, etc., referred to in the petition are of importance in disposing of the pending suits. *"But the Court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it." California* v. *San Pablo, etc., R. Co.*, 149 U. S. 308, 314.

II.

The judgment of the Court of Customs Appeals should be affirmed because its correctness is conclusively established by its prior decision upon the same question and further argument is needless and could serve no purpose other than delay.

Conclusion.

For the reasons herein given it is respectfully submitted that the writ of certiorari should be dismissed or in the alternative the judgment below should be affirmed.

Respectfully submitted,

EDWARD P. SHARRETTS,
Attorney for Respondents.

Office Supreme Court U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 150

THE UNITED STATES, PETITIONER,

vs.

STONE & DOWNER CO. AND LOWE DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

BRIEF FOR RESPONDENTS.

EDWARD P. SHARRETTS,
For the Respondents.

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BRIEF FOR RESPONDENTS.

References to the Official Report of the Opinions Delivered in the Courts Below.

The opinion of the United States Court of Customs Appeals in the present suit is reported in United States *vs.* Stone & Downer Co., 12 Ct. Cust. Appls., 557, and is printed in the present record (R., 402).

The concurring opinions by the Board of United States General Appraisers, affirmed by the Court of Customs Appeals, are reported in T. D. 40368-46 T. D. 142 (R., 397).

The opinion of the United States Court of Customs Appeals in a prior suit between the present parties involving the same issue is reported in Stone & Downer *vs.* United States (12 Ct. Cust. Appls., 62), and is printed in the present record (R., 409).

Statement.

The United States Court of Customs Appeals has twice decided the question presented in this issue in favor of the present respondents. Both judgments represent the unanimous decision of the five judges of that court. The first case was decided in Stone & Downer *vs.* The United States (suit 2245) on November 17, 1923. No attempt was made to obtain a review of the judgment in that case.

The second decision on a later protest covering exactly similar shipments of wool, yarn, and cloth is the one now before this Court on certiorari. The record, including the judgment and opinion in the earlier case, is part of the present record. A motion was made by respondents on October 18th, 1926, to dismiss the present writ, on the ground that the earlier judgment of the Court of Customs Appeals, never having been reversed nor modified, was *res judicata* and conclusive upon the petitioners as to the questions presented here. Further consideration of that motion was continued until the case should be reached on the merits.

In its second opinion the Court of Customs Appeals followed the earlier decision. Most of the considerations upon which the court below based its conclusions are set forth more fully in its earlier opinion which is printed in the present record (R., 409).

The imported merchandise, the customs classification of which is in dispute, consists of certain long wools known as combing wools, represented by Exhibits 1 to 12, and certain worsted yarn and worsted fabrics, represented by Exhibits 14 and 15. The exhibits used in the present suit are the same ones used in the prior suit (R., 20).

The wool was assessed for duty under paragraph 18 of the Emergency Tariff Act of 1921 (C. 14, 42 Stat. 9, 10). It is claimed by the respondent and held by the courts below to be free of duty under paragraph 650 of the Tariff Act of 1913 (C. 16, 38 Stat. 114, 164). The yarn and cloth were assessed with emergency duties provided in paragraph 19 of the said Emergency Act (42 Stat. 10). The courts below held that the said yarn and fabrics were not subject to the emergency duties provided in said paragraph 19.

The issue presented may be narrowed to the single question: Is the wool at bar "wool commonly known as clothing wool?"

Paragraph 650 of the Tariff Act of 1913 (C. 16, 38 Stat., 114, 164) extended free entry to all classes of sheep's wool in the general provision "wool of the sheep."

The Emergency Tariff Act of 1921 did not repeal the Tariff Act of 1913, nor was it intended to be a general revision of the tariff. It simply selected certain classes of goods and applied to them the emergency duties, leaving all commodities not so named subject to the provisions of the 1913 Act.

Paragraph 18 of the Emergency Act (C. 14, 42 Stat., 9, 10) directed an assessment of duty on one class of sheep's wool, namely, "wool commonly known as clothing wool," leaving all other classes free under paragraph 650 of the Act of 1913.

Paragraph 19 of the Emergency Act (42 Stat., 10) directs an assessment of emergency duties in addition to those specified by the Act of 1913 on manufactures of the wool named in paragraph 18, that is to say, manufactures of wool commonly known as clothing wool.

The Court below held in the prior suit and in the present suit that the wool, yarn and fabrics at bar is combing wool and manufactures of combing wool; that "clothing wool" does not embrace "combing wool," and therefore the said merchandise is not subject to the emergency duties provided in paragraphs 18 and 19.

Petitioner does not deny that the wool at bar is combing wool and concedes that commercially there is a distinction between "clothing wool" and "combing wool" (brief, p. 22), but argues that both classes are in fact "clothing wool" because used in the manufacture of clothing and asks for a construction of the law to that effect.

Respondent concedes that combing wool is made into yarn and fabrics used in the manufacture of wearing apparel but contends that that use does not determine the names under which the different classes of wool are known; but on the contrary, as pointed out by the court below, wherever wool has been the subject of recorded discussion, not only in trade and commerce, but in dictionaries, encyclopædias, publications of the Departments of the Government, including the Tariff Commission, and in prior tariff act, the term "clothing wool" and "combing wool" have been defined and used to designate separate and distinct classes of wool.

The questions here, therefore, are whether the raw wool at bar, as represented by Exhibits 1 to 12, is wool commonly known as clothing wool, and whether the yarn and fabrics, as represented by Exhibits 14 and 15 are manufactures of such wool.

It is conceded by both sides that the yarn and fabrics are made from wools such as Exhibits 1 to 12. Therefore, the issue may be narrowed to the single question: Is the wool at bar "wool, commonly known as clothing wool?"

ARGUMENT.

I.

The wool at bar is not wool commonly known as clothing wool. On the contrary, it is combing wool, a separate and distinct class of wool.

In 1915 the United States Department of Agriculture published a work prepared by F. R. Marshall and L. D. Heller, of the Animal Husbandry Division, entitled "The Wool Grower and the Wool Trade, Bulletin No. 206," which is a recognized authority and which has been quoted from to some extent in the opinions below. (It will be noted that this work is referred to as an authority on wool in the Encyclopaedia Americana under the title "Wool," vol. 29, p. 506, 1920 edition.) This authority furnishes us with very clear information as to the classification of wool and the grading of wool. We quote the following extracts from this work under the heading "Classes of Wool," pages 5 and 6.

> "The value of wool is influenced more or less by its length and it is classified accordingly. The longer wools are known as 'combing' and the shorter ones as 'clothing.' "
>
> * * * * * * *
>
> "The combing wools are used in worsted manufacturing. Only the longer straightened fibers are used and these are placed parallel in the yarn."
>
> * * * * * * *

"Clothing wools are used in the manufacture of woolens, felts, etc. The fibers are laid in every direction and instead of attempting to arrange them parallel as in worsteds, the opposite extreme is desired.

* * * * * * *

"The difference in value between combing and clothing wools is from two to six cents per scoured pound, in favor of the former."

* * * * * * *

"Coarse, low wools more or less resembling hair are classed as carpet wools."

After the wool is classed as above indicated, the fleeces classed as "combing wool" and the fleeces classed as "clothing wool" are graded according to quality. Quality is determined by the fineness of the fiber; that is to say, its diameter.

In the United States the different qualities are indicated by such terms as "fine," "half-blood," "three-eighths-blood," "quarter-blood," and "braid."

The said bulletin at page 15 has the following to say with respect to these grade names:

"Half-blood, three-eighths-blood, and quarter-blood grades, as the terms were coined, referred supposedly to wools from sheep of half, three-eighths, and quarter Merino blood, but they have no such significance now. Wools grading as high as half-blood can come from sheep having no trace of Merino blood; the purebred Southdown, for instance, produces

wool that sometimes grades that high, and this breed has been kept pure from outside blood for centuries. On the other hand, quarter-blood would rarely come from a sheep containing any Merino blood. Low quarter blood is a grade lower than quarter blood, and braid is the lowest grade of all. It usually refers to luster wool, such as might come from a Lincoln or a Cotswold sheep."

At page 18 of the said Bulletin 206 appears the following table which shows the way the wool is classified and graded:

Classification and Grades of Territory Wools.

COMBING.

Fine staple Fine medium staple	usually one grade.
Half-blood staple.	
Three-eighths-blood staple.	
Quarter-blood staple.	
Low-quarter-blood staple Coarse, common, low, or braid	often one grade.

CLOTHING.

Fine clothing Fine medium clothing	usually one grade.
Half-blood clothing.	
Three-eighths-blood clothing.	
Quarter-blood clothing, or short quarter-blood.	

Practically all three-eighths-blood and quarter-blood wools are of combing length.

The term "staple" as applied to a territory wool refers to a combing wool. "Ordinary" is sometimes used to designate clothing wool in this section instead of referring to quality. The terms of fine, fine medium, medium, and low medium have arisen and are used in a general way in referring to territory wools. They are often used in referring to original lots and are largely equivalent to the following:

Fine ==XX and X qualities, or fine staple and fine clothing.
Fine medium==X, half-blood and three-eighths-blood.
Medium ==Three-eighths-blood and quarter-blood.
Low medium==Low quarter-blood and braid."

The United States Tariff Commission in its report to Congress in 1921 on "The Wool-Growing Industry" at page 215 of the report says:

> "Wools are graded in the trade chiefly according to diameter and length of fiber. On the basis of diameter (quality or fineness) the grades used for range-grown ('Territory') clips are fine, fine medium, half-blood, three-eighths-blood, quarter-blood, low quarter-blood, common, and braid. Wool grown east of about the one-hundredth meridian—*i. e.*, farm or 'fleece' wools—is graded usually as 'XX,' 'X,' half-blood, and as above for lower qualities. 'XX' and 'X' fiber of superior length is known as fine Delaine and Delaine.
>
> "On the basis of length the division is into 'combing' and 'clothing.' Combing wool is used in the Bradford (English) system of worsted

> manufacture, in which nearly all the shorter lengths are combed out as 'noil,' while the fibers are laid parallel in making the 'tops,' which is the first stage in the manufacturing process after scouring. Strictly clothing wools are adapted only to carding, by which process the fiber is laid in every direction, interlocked or felted, and are manufactured into 'woolen' goods. Noil, which is the by-product of combing and mill waste in general, is used with clothing wools in making some woolens."

At page 217 of the report the Tariff Commission calls to the attention of Congress the fact that the United States Department of Agriculture, in its endeavor to promote uniformity in grading wool, had established tentative minimum lines between grades as follows:

"TABLE XXXI.—*Bases for Tentative Length Divisions in Wool Grades.*

[U. S. Department of Agriculture, Bureau of Markets.]

Grade.	Clothing.	French or baby clothing.	Strictly combing.
Fine	Under $1\frac{1}{4}$ inches	From $1\frac{1}{4}$ to 2 inches	Over 2 inches.
One-half-blood	Under $1\frac{1}{4}$ inches	From $1\frac{1}{4}$ to $2\frac{1}{4}$ inches	Over $2\frac{1}{4}$ inches.
Three-eighths-blood	Under $1\frac{1}{2}$ inches	From $1\frac{1}{2}$ to $2\frac{1}{2}$ inches	Over $2\frac{1}{2}$ inches.
One-quarter-blood	Under $1\frac{1}{2}$ inches	From $1\frac{1}{2}$ to $2\frac{3}{4}$ inches	Over $2\frac{3}{4}$ inches.
Low one-quarter-blood	Under 2 inches	From 2 to 3 inches	Over 3 inches.

"Common and braid wools are so rarely shorter than 3 inches, and are so rarely sufficiently weakened by the various things that cause 'tender' wool, that there is no necessity for suggesting a 'baby combing' class for them."

Precisely the same definitions for the terms "clothing wool" and "combing wool" as indicated in the above authorities are found in the books of ordinary reference. Webster's New International Dictionary defines the terms "clothing wool" and "combing wool" as follows:

"Clothing wool—a fine, close, short staple wool."

"Combing wool—a wool adapted for being combed."

Standard:—

"Clothing wool—a compact, fine short fibered wool suitable for felting."

In addition to the foregoing the following authorities, extracts from which are given in the opinion in suit 2245 (R., 410-415), make the same distinction between the terms "clothing wool" and "combing wool":

Encyclopædia Americana, vol. 29, pp. 501, 502.

Nelson's Perpetual Loose-Leaf Encyclopædia, vol. XII, tit. Wool, p. 634.

New International Encyclopedia, tit. Wool, vol. 20, pp. 642, 643.

Appleton's New Practical Cyclopædia, vol. 6, p. 431.

Knight's Cyclopædia of Industry, tit. Woolen and Worsted Manufactures, p. 1795.

The record in suit 2245, which is part of the present record, contains the testimony of men of wide experience in the wool industry, most of whom were called by the Government. As stated by Judge Bland speaking for the Court of Customs Appeals in the opinion in suit 2245 (R., 410):

> "It can be fairly said that there is very little controversy among the witnesses as to the meaning of the terms 'clothing wool' and 'combing wool'. With almost perfect unanimity they have agreed that anyone and everyone knowing anything about wool as an article of commerce knows that clothing wools are the short-fibered wools commonly used by manufacturers, while combing wools are long-fibered wools commonly used by worsted manufacturers in the worsted system."

Petitioner has not challenged the correctness of that finding.

The testimony is practically unanimous that "clothing wools" are the short wools used in the woolen system; combing wools are the long wools used in the worsted system; the wool at bar, Exhibits 1 to 12, are combing wools. (R., 31, 51, 52, 60, 75, 78, 81, 82, 84, 85, 89, 124, 125, 126, 154, 168, 174, 190, 191, 199, 200, 269, 279, 292, 304.) The coarse wools known as carpet wools are divided according to length into clothing carpet wools and combing carpet wools (R., 123, 271).

When the present suit was tried six additional witnesses, five of whom were called by the Government,

in the woolen system of manufacturing

testified as to the use of the terms "clothing wool" and "combing wool" in the wool growing sections of the country. These witnesses were for the most part officers in wool growers associations. As to this testimony Judge Bland, speaking for the court below, says in the opinion (R., 402):

> "The new evidence throws no new light on the case, except that a reading of it confirms us in the opinion that wherever and whenever clothing wool is spoken of by anyone knowing the meaning of the term it means a short-stapled wool used in the carding process as distinguished from combing wool, which is used in the combing or worsted process."

From the foregoing it is clear that the short staple wool is commonly and generally known as "clothing wool" to anyone and everyone knowing anything about wool as an article of commerce. It is equally obvious that combing wool is not commonly known as clothing wool.

Congress, with full knowledge of the commonly and generally accepted classification, has in clear unambiguous language limited the duty to "wool, commonly known as clothing wool."

The wool at bar is combing wool. It is, therefore, outside the taxing provision.

II.

Congress in prior tariff acts has recognized the classification of wool into clothing wool, combing wool and carpet wool.

The Tariff Act of 1867 (c. 197, 14 Stat., 559) contained the following provisions:

Class 1—Clothing Wool.

That is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the U. S. from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

Class 2—Combing Wools.

That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the alpaca, goat, and other like animals.

Class 3—Carpet Wools, and Other Similar Wools.

Such as Donskoi, native South American, Cordova, Valparaiso, native Smyrna, and including all such wools of like character as have

> been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria and elsewhere.

The same classification is contained in the Tariff Act of 1883 (c. 121, 22 Stat., 488, 508).

Petitioner, at page 23 of his brief, has printed in full only the first of the above classifications, namely, "Class I. Clothing Wool." They are printed above as they appear in the statute.

Petitioner does not deny that the wools at bar are combing wools, but insists that they would have been classed as Class I, Clothing Wools, under the Act of 1867, because they are of merino blood and come from Australia, New Zealand and South America.

Petitioner's argument, however, does not take into account radical changes that have taken place in the breeding of sheep since the acts in question were passed. In 1867, no doubt, most of the "clothing wool" came from pure merino sheep and the Down short wool breeds which produce the shortest wool, while the combing wools came from the pure English long wool breeds such as the Leicester, Cotswold, Lincolnshire and Down long wool sheep.

The Tariff Acts of 1867 and 1883 grouped wools accordingly. The Encyclopædia Brittanica under the title "Wool" tells us that up until 1885 Australia confined itself to the production of Merino wool. The development of the frozen meat trade between 1880 and 1890 changed conditions and there was a tendency to breed larger sheep with a valuable carcass and

mediocre wool. New Zealand was especially adapted for this development. "In this manner," says the Encyclopædia, "it came about that cross-bred wool supplanted Merino wool to a very considerable extent throughout Australasia. This change would have been serious for the wool comber and spinner had not the Bradford combers, spinners, and manufacturers put their shoulder to the wheel and developed a world-wide renown for their cross-bred tops, yarns, and fabrics." This same authority tells us that sheep breeding developed into a real science and remarkable results were obtained with such crosses as Merino-Lincoln, Merino-Leicester, and Merino-Shropshire.

It will thus be seen that by breeding and selection wools showing merino blood were produced of sufficient length to be classed as combing wool. These wools were no doubt shorter than the wool from the pure English breeds but combing machinery was improved so as to manipulate them.

Congress recognized that after 1885 it was incorrect to group all wools of Merino blood under the heading "Clothing Wool," and in all acts subsequent to the Act of 1883 the headings were omitted.

This does not mean, however, that the distinction between clothing wool and combing wool ceased to exist. On the contrary, the present record shows conclusively that it is just as important today as it ever was, and that the fundamental distinctions between the two classes of wool is the same, that is, clothing wools are the short wools, that go to the woolen in-

dustry, and combing wools are the long wools, that go to the worsted industry.

The testimony of Petitioner's own witnesses shows that one of the purposes of the various wool growers associations is to educate the farmers as to the correct method of classifying their wool into "clothing wool" and "combing wool" (R., 36).

Congress itself as late as the Tariff act of 1909 uses the terms "clothing wool" and "combing wool" to distinguish between the Down short wools and the Down long wools. (38 Stat., 11.)

Thus among the wools specified in paragraph 361 of the 1909 Act are "Down clothing wools," and among the combing wools specified in paragraph 362 of that act are "Down combing wools."

In the case of the Down wools these same terms have been used to distinguish the two classes in every tariff act since the Act of 1867, excepting the free wool acts of 1894 and 1913.

The pertinent wool provisions of the successive tariff acts are set forth in the opinion in suit 2245 (R., 422-425).

It will thus be seen that for over fifty years in five tariff acts Congress used the terms "clothing wool" and "combing wool" to designate separate and distinct classes of wool.

The entire legislative history of the use of these terms is clearly opposed to petitioner's contention that the term "clothing wool" as used in the present enactment was intended to designate wool for use in the manufacture of clothing.

If it has been the purpose of Congress to designate wool used in the manufacture of wearing apparel, it is obvious that the term "clothing wool" would have been the last term adopted for that purpose, knowing as it must be presumed Congress did know, its legislative history and the fact that this particular term was in general common use among those to whom the law was directed, and who would necessarily have to conduct their business under this law, as well as in all dictionaries and other authorities in an entirely different sense.

When the Emergency Act was in the Senate, Senator Lodge introduced the following amendment:

> "Paragraph 18, page 3, line 16, strike out the words 'wool commonly known as clothing wool,' and in place thereof insert the words 'all wool.'"
>
> (See *Congressional Record* of February 1, 1921, ~~at page 2198~~. Vol. 60 part 3 page 2378.)

The proposed amendment was not acted upon and therefore may not serve as evidence of any intent of Congress. It clearly shows, however, the phraseology that would have been necessary to accomplish the purpose that petitioner claims for a differently worded provision. Congress did not demand a duty on all wool excepting carpet wool. It specifically limited the duty to "clothing wool."

III.

In reaching its conclusions, the Court of Customs Appeals proceeded according to the well-established rules governing the tariff classification of imported merchandise. Its decision was right.

The plain facts of the case are these: The Emergency Act in clear language requires a duty on clothing wool. The wool at bar is combing wool. Clothing wool and combing wool are separate, distinct and different classes of wool. That the present wool is in fact combing wool does not seem to be anywhere disputed, nor indeed could it be, because that fact was well established by the practically unanimous testimony of all the witnesses including those called by the Government.

The Court of Customs Appeals accepted the normal, ordinary meaning of the term "clothing wool" as defined in the dictionaries, encyclopedias and publications of the Federal Government, including the Tariff Commission and the Department of Agriculture. The court gave due consideration to the use of the term in prior tariff acts and to the use and understanding of the term by witnesses from various branches of the wool industry.

All of the above sources of information unite in one common use and definition of the term "clothing wool," and in view of this universally accepted understanding and meaning for the term, the court held that its meaning was not ambiguous.

The mere fact that the term is widely used, discussed and defined in official publications of the Federal Government, would in itself leave no doubt as to what Congress understood to be the scope and meaning of the term.

In the latter connection it might be noted that as late as May 26, 1924, the Treasury Department in a regulation requires importers of wool to classify clothing wool and combing wool separately on their customs entries, T. D. 40217 (45 Treas. Dec., 670).

In United States *v.* Buffalo Natural Gas Fuel Co., 78 Fed., 110, the Circuit Court of Appeals, in the Second Circuit, had before it a customs case brought there under the then existing procedure from the Board of General Appraisers. The question before it involved the meaning of the term "minerals" as used in a tariff provision, the specific question being whether it included "natural gas." It was there found that natural gas was listed as a mineral in the "Statistical Abstract of the United States" prepared under the direction of the Secretary of the Treasury and containing statistics of finance, coinage, commerce, etc. In its opinion, the court, speaking through Judge Lacombe, said, at page 112:

> "If the question whether the word 'mineral' in ordinary speech would include such an article as natural gas, were to be settled solely from reference to the dictionaries, its solution might not be easy. In view, however, of the various official publications by the Federal Government set forth in the record, and which are not intended for scholars or scientific men, but

> to give to Congress and to the people the best knowledge the compilers can, there can be little doubt as to what Congress understood to be the scope and meaning of the words,—a scope and meaning which is within some, at least, of the definitions of the lexicographers."

The decision in the above case was affirmed in United States *v.* Buffalo Natural Gas Fuel Co., 172 U. S., 339.

In Merck *vs.* United States, 6 Ct. Cust. Appls., 32, 34, 35, official bulletins pubished by the Department of Agriculture were accepted as determinative of the meaning of the term "sheep dip."

Petitioner urges that the court should not have given consideration to the testimony of commercial witnesses as to the meaning and use of the term "clothing wool." The contention, however, is obviously without merit. In the first place, the court did not base its conclusion as to the meaning of the term solely upon the testimony of commercial witnesses. That was merely one of the considerations. As we have already pointed out, the court gave full consideration to the definitions in the dictionaries, encyclopedias, publications of the Federal Government, and to the use of the term in prior tariff acts. Obviously the commercial understanding could not be excluded without excluding the only meaning in which the term is ever understood or used. The union of these various sources in a common definition simply established what already existed as a presumption. Thus in Swan *vs.* Arthur, 103 U. S., 597, this Court said:

> "While tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

Furthermore, there was ample authority for the Court to give due and proper consideration to the testimony of the commercial witnesses as to the use and understanding of the term. Raw wool because of its very nature exists only as an article of commerce. Laws imposing duties upon imported merchandise are intended for practical use and application by men engaged in commerce and presumably are drafted in language understood by those to whom they are necessarily directed. This was early recognized by this Court *In Re* Two Hundred Chests of Tea, 9 Wheat., 438, wherein Mr. Justice Storey, speaking for the Court said, at page 438 of the opinion:

> "The object of the duty laws is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade."

In Elliott *v.* Swartwout, 35 U. S. (10 Pet.), 137, 151, this Court, speaking through Mr. Justice Thompson, said:

> "Laws imposing duties on importations of goods are intended for practical use and application by men engaged in commerce; and hence

> it has become a settled rule in the interpretation of statutes of this description to construe the language adopted by the legislature, and particularly in the denominations of articles, according to the commercial understanding of the terms used."

In Hedden *v.* Richards, 149 U. S., 346, 349, this Court, speaking through Mr. Justice Shiras, said, in regard to a tariff provision:

> "The words are to be taken in the sense in which they will be naturally understood by those to whom they are addressed."

The above rules have been universally followed in the interpretation of tariff provisions. In fact, they were followed by the Court of Customs Appeals in an earlier case involving the same provision of the Emergency Tariff Act as is involved in the present case, namely, "wool, commonly known as clothing wool." United States *v.* Davies, 11 Ct. Cust. Appls., 392, 395. In the latter case, the Government accepted the decision and a large number of claims were settled thereunder by stipulation.

As was clearly pointed out by the Court of Customs Appeals in its opinion in suit 2245 (R., 419), none of the words of the present provisions—"wool, commonly known as clothing wool"—is new to tariff legislation. The identical phrase "commonly known as" has been used in connection with other merchandise in prior tariff acts. Thus in Tiffany *v.* United States, 131 Fed., 398, the court was called upon to determine the char-

See also { American Net & Twine Co. v. Worthington, 141 US 468,471
Goat&Sheepskin Co. v. U.S., 206 US. 194,203

acter of articles coming within the provisions for "articles commonly known as jewelry." Its conclusion was based upon the testimony of witnesses from various branches of the trade. The decision in Tiffany *v.* United States, *supra*, was acquiesced in by the Treasury Department in Treasury Decision 25316 (7 Treas. Dec., 840). In the opinion in suit 2245 (R., 419) Judge Bland also called attention to the fact that the synonymous phrase "usually known" has appeared in five prior tariff acts in connection with the commercial names of various classes of wool, such as Leicester, Cotswold, Lincolnshire Down Combing Wools, Canada Long Wools, etc., and that "no court or administrative official has held that the phrase 'usually known' changed the meaning from that understood by those familiar with the terms used in woolen commerce and trade."

In Cooper *v.* Dobson, 157 U. S., 148, this Court had under consideration an importation of short goat hair that had been classified for duty under Schedule K of the Tariff Act of 1883 in the following provision (22 Stat., 488, 508):

> "Class two, combing wools.—That is to say, Leicester, Cotswold, Lincolnshire, down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also all hair of the alpaca, goat, and other like animals."

The importers contended that the goat hair in the importation was too short to be suitable for combing,

and asked this Court to construe the above provision "as meaning that class two should consist wholly of articles that coud be used for combing purposes, that is, as well hair of the goat as wools that were susceptible of treatment by combing," thus excluding the hair in question.

In declining to construe the provision in the manner requested, this Court, speaking through Mr. Justice Shiras, said, at page 153:

> "Adopting the reasoning and the language of the opinion of the Circuit Court of Appeals above referred to, we hold that, upon the face of the Act of 1883, and according to the clear and unambiguous meaning of its words, no wools, indeed, are included in class 2, except combing wools or wools fit for combing; but that there is no such restriction with regard to hair * * * ."

The opinion of the Circuit Court of Appeals referred to was United States *v.* Hopewell, 51 Fed., 798 (5 U. S. App. 137).

If the phrase "usually known," as used in the above provision, does not make the meaning of the term "combing wool" ambiguous, there is no reason why the synonymous phrase "commonly known" should make the term "clothing wool" ambiguous in the present enactment.

Long staple wool is usually or commonly known as combing wool. Short staple wool is usually or commonly known as clothing wool.

While the origin of the respective classes has changed during the past fifty years and cross breeding has somewhat changed the blood distinctions, yet the fundamental difference between the two classes—clothing wool and combing wool—is the same today that it has always been—clothing wools are and always have been the short wools used in the woolen industry: combing wools are and always have been the long wools used in the worsted industry.

Having found that the terms of the act were unambiguous and that the term "clothing wool," when given its normal and generally accepted meaning, did not include combing wool, the Court of Customs Appeals declined to enlarge the taxing provision so as to include a class of wool not included within the clear meaning of its terms.

In the foregoing we have discussed the reasoning and conclusions of the Court of Customs Appeals in suit 2245.

When these precise questions came up again to the Court of Customs Appeals in the present suit, Judge Bland, again speaking for the court, said, in the opinion below (R., 403):

> "When we read the testimony of additional witnesses and consult additional authorities, it becomes more apparent that the common meaning of the words 'clothing wool' is that it is a short-fibered wool."

Respondents respectfully submit that the conclusions of the Court of Customs Appeals were based

upon sound and well-established principles and should be affirmed.

IV.

The statute in clear unambiguous terms limits the duty to "clothing wool." Its terms cannot be enlarged by construction so as to include the wool at bar which belongs to a separate and contrasted class of wool known as combing wool.

The omission of combing wool from the purview of the emergency act does not run counter to the general system of the emergency legislation. The Emergency Act did not repeal the Act of 1913. It was not intended to be a general revision of the tariff. It simply named certain classes of goods for the emergency duties leaving the 1913 Act in full effect as to the commodities not so named.

In the Cotton Schedule the Emergency Act in paragraph 16 (C. 14, 42 Stat., 7), directs an emergency duty on "cotton having a staple of one and three-eighths inches or more in length." The short staple cotton was not mentioned in the Emergency Act and so remained free under the general provision for "cotton" in paragraph 467 of the free list of the 1913 Act.

In the case of wool, combing wool was not the only class of wool omitted from the emergency duty. Wool imported on the skin was not specifically named in the Emergency Act. In United States *v.* Davies, 11 Ct. Appeals, 392, the question arose as to whether wool on the skin should be included in the present provision

for "wool, commonly known as clothing wool." It was conceded that the wool was suitable for use in the manufacture of clothing. The court held that wool on the skin had always been regarded commercially and legislatively as separate from clipped wool and therefore did not come within the emergency provision for "wool, commonly known as clothing wool." That decision was accepted by the Treasury Department.

Petitioner seeks to have the taxing provision enlarged by construction so as to include "combing wool," in order to meet a supposed policy of Congress which petitioner alleges is revealed in the history of the times, committee reports, and in remarks made by individual members of Congress in committee hearings and in debates on the floor of the House and Senate.

At page 17 of his brief on petition, petitioner insists that the above sources of information indicate the congressional intent to protect "the large body of domestic wool producers" and that the exemption of "combing wool" from the tax as claimed by the importers would defeat the purposes of the legislature, "as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade."

Neither the record nor any other source of information supports the contention that only a small class of domestic growers produce wool of the clothing grade. But however that may be, the petitioner's assertions merely admit the distinctions between the two classes

of wool and emphasize the fact that the statute as written does not include "combing wool."

Nowhere in the brief does the petitioner stand squarely upon the proposition that the words of the act are ambiguous, yet under the clear rule of decision, that is a necessary condition precedent to a search for intent outside of the law.

Even where the terms of an act are obscure or ambiguous, this Court has never authorized an indiscriminate search for intent through the journals of the legislature, such as petitioner resorts to in his brief and the appendix thereto. Most of the references are to remarks made by individual members of Congress in debates or during committee hearings. In one of the very cases relied upon by the petitioner (brief, p. 20), namely, Duplex Printing Press Co. *v.* Deering, 254 U. S., 443, 474, this Court, speaking through Mr. Justice Pitney, said:

> "By repeated decisions of this Court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body."

In Pennsylvania R. R. Co. *v.* International Coal Mining Co., 230 U. S., 184, 199, it was said, in regard to reports of committees:

> "While they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of

> a committee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different."

There is nothing referred to in petitioner's brief to indicate that there was any legislative intention to include "combing wool" in the assessment, nor is there anything to indicate that Congress did not believe that an assessment on clothing wool, only, would properly meet the existing emergency and supply the necessary protection to the wool-growing industry, or at least as much protection as the majority deemed it wise to ask for in a bill that met with extreme opposition in an almost equally divided Congress. See Lincoln *v.* United States, 202 U. S., 484, 498.

While the respondent has no reason to feel alarmed at the prospect of an inspection of any of the data referred to by the petitioner, yet, the data in question is clearly immaterial.

Petitioner seems to have adopted the view that the court, rather than Congress, is the final arbiter of the character of legislation necessary to meet the emergency existing at the time the law was passed.

Proceeding upon that theory the petitioner has set forth in his brief a description of the financial and industrial emergency existing at the time the law was enacted, apparently with the view that the court should study the emergency for the purpose of determining whether or not the law adequately met that emergency. He seems to be of the further view that the court should compare the measure of protection

given to producers of clothing wool and the measure of protection given to the producers of combing wool, and if it should be found, as petitioner alleges at page 17 of his brief, that an assessment of duty on clothing wool only would not properly meet the emergency and would leave the producers of combing wool without protection, that the Court should enlarge the provision so as to include combing wool in the enactment, although the inclusion of combing wool may not be consistent with the strict letter of the statute.

In other words, the petitioner in effect contends that the language of the law, although clear, must give way to a construction that the Court might regard as better serving the reasons that induced its enactment.

The rule, however, as established by this Court is the other way around. It must be presumed that the assessment of duty on clothing wood met the emergency just as Congress intended that it should be met and provided the protection that Congress intended should be provided, and that an assessment of duty on "combing wool" was not deemed necessary or expedient in order to accomplish the purpose.

The rule was clearly stated in McKenzie *v.* Hare, 239 U. S., 299, 308, where Mr. Justice McKenna, speaking for this Court, said, at page 308 of the opinion:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language, or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and

> expressed by its words, and it makes no difference that in discussion some may have given more prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

Furthermore the alleged discrimination against the growers of combing wool would not justify the interpolation of the term "combing wool" into the provision by the Court.

In Chung Fook *v.* White, 264 U. S., 443, this Court had before it a case involving an exceptional instance of discrimination. Section 22 of the Immigration Act of February 5, 1917 (Chapter 29, 39 Stat., 891), made an exception to the general prohibition against the entrance into the United States of aliens afflicted with dangerous diseases. The exception was in the case of the alien wife or child of a naturalized citizen, who might be admitted for hospital treatment. The provision, however, failed to mention native born citizens, so that according to its terms there was a definite discrimination against a native born citizen in favor of a naturalized citizen. This Court was asked to construe the law so as to include native born citizens. Speaking through Mr. Justice Sutherland, this Court took the view that it could not interpolate the words "native born citizen" without usurping the legislative function, and on page 446 of the opinion, it was said:

> "The words of the statute being clear, if it unjustly discriminates against the native born citizen, or is cruel and inhuman in its results,

> as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional."

As was pointed out by Judge Bland in the opinion below (R., 405) the Court is not permitted "to speculate as to why Congress, as a whole or as individuals, would wish to include or exclude one of the well-known grades of wool from the protective tariff provision."

As was stated by this Court through Mr. Justice Hughes in a customs case, United States *v.* Citroen, 223 U. S., 407, 415:

> "We are not concerned with the reason for the distinction; it is enough that Congress made it."

In an early customs case decided by this Court in Pennington *v.* Coxe, 2 Cranch, 33, 59, Mr. Chief Justice Marshall, speaking for the Court, said:

> "Those political motives which induced the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration."

In view of the fact that the law as enacted clearly omits combing wool from the taxing provision it is useless for petitioner to attempt to show that it was the policy of the Government to include it.

In United States *v.* First National Bank, 234 U. S., 245, it was said, at page 260 of the opinion:

> "But the policy of the Government in passing legislation is often an uncertain thing, as

to which varying opinions may be formed, and may, as is the fact in this case, afford an unstable ground of statutory interpretation." Citing Hedden *v.* The Collector, 5 Wall., 107, 111.

Even if it could be shown that there was no good reason why combing wool should have been omitted from the statute, that would not constitute a reason for its being interpolated by the Court. In Bates Refrigerating Co. *v.* Sultzberger, 157 U. S., 1, 37, it was said:

> "It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The rule against enlarging the subject-matter of a statute by judicial interpretation has been applied with even greater particularity in the case of statutes levying taxes including customs duties.

In Eidman *v.* Martinez, 184 U. S., 578, 583, this Court, speaking through Mr. Justice Brown, said:

> "We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language."

The same rule was again stated in Gould *v.* Gould, 245 U. S., 151, 153, wherein Mr. Justice McReynolds, speaking for the court, said:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the Government, and in favor of the citizen. United States *v.* Wigglesworth, 2 Story, 369; American Net & Twine Co. *v.* Worthington, 141 U. S., 468, 474; Benziger *v.* United States, 192 U. S., 38, 55."

The rule was again repeated in United States *v.* Merriam, 263 U. S., 179, 187, 188, wherein Eidman *v.* Martinez, *supra*, was cited with approval. Mr. Justice Sutherland, speaking for the court, referred to a still earlier recital of the rule by Lord Cairns in Partington *v.* Attorney General, L. R. 4; H. L., 100, 122, from which we quote the following:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

It will thus be seen that even if the present question were one of doubt, the doubt would be resolved in favor of the importer.

In American Net & Twine Co. *v.* Worthington, 141 U. S., 468, this Court had under consideration the

tariff classification of certain "gilling twine." Mr. Justice Brown, speaking for the court, said at page 475 of the opinion:

> "We think the intention of Congress that these goods should be classified as "gilling twine" is plain; but were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language."

The same view has been taken by this Court in other customs cases.

Hartranft *v.* Weigmann, 121 U. S., 609, 616.
Benziger *v.* United States, 192 U. S., 38, 55.

V.

The doctrine of res judicata has a clear application to the case at bar.

In petitioner's fifth point, at page 28 of his brief, he undertakes to reply to respondents' motion to dismiss or affirm. He says:

> "It is a universal rule long established in Customs procedure that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts."

We readily concede that the prior suit, No. 2245, and the present suit are separate and distinct actions.

Under the well-established rule of decision, however, the judgment in the first action is conclusive as to every question decided there and which is raised again in the second action between the same parties. It is unnecessary to cite authorities, as they are fully set forth in our brief filed in support of our motion.

Conclusion.

The judgment of the United States Court of Customs Appeals should be affirmed.

Respectfully submitted,

EDWARD P. SHARRETTS,
For the Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 150.—October Term, 1926.

The United States, *vs.* Stone & Downer Co., and Lowe, Donald & Co.	On Writ of Certiorari to the United States Court of Customs Appeals.

[May 16, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This is a proceeding by certiorari to review the judgment of the Court of Customs Appeals in the classification for duty of thirteen importations of wool in the fleece and in the yarn. 12 Court of Customs Appeals Reports, 557. The certiorari was granted by this Court October 12, 1925, 269 U. S. 542, a certificate of importance by the Attorney General under section 195 of the Judicial Code, as amended August 22, 1914, c. 267, 38 Stat. 703, having been filed in the Court of Customs Appeals before the case was decided in that court.

A similar case between the same parties, involving the same questions and importations of similar merchandise was decided adversely to the Government by the Court of Customs Appeals on November 17, 1923, *Stone & Downer Co.* v. *United States,* 12 Court of Customs Appeals Reports 62; 45 Treasury Decisions, 167, T. D. 40019. In that case, however, there was no certificate of importance filed by the Attorney General, and no application was made for a writ of certiorari.

The case as now presented to this Court involves two questions.

First, is the judgment of the Court of Customs Appeals in November, 1923, involving the same customs classification an estoppel by *res judicata* against the Government?

Second, If it does not so operate, was the Court of Customs Appeals right in holding that twelve of the thirteen importations herein are entitled to come in as wool of the sheep under the

tariff act of October 13, 1913 (c. 16, 38 Stat. 114), and not as clothing wool under paragraphs 18 and 19 of the Emergency Tariff Act of May 27, 1921 (c. 14, 42 Stat. 9, 10)?

First Question. It is settled in this Court that the general rule by which a judgment estops the parties in future litigation between them, to question either a fact or a point of law necessary to the first judgment and adjudicated therein, applies to cases of taxation as well as to other subjects of litigation. This was decided in the case of *New Orleans* v. *Citizens' Bank*, 167 U. S. 371. That was a tax suit, and the issue was whether the judgment of a court of competent jurisdiction in holding that the Citizens' Bank had exemption by contract from certain taxation was *res judicata* and estopped the city from attempting to enforce subsequent taxes contrary to the same exemption. The Court, through Mr. Justice White, said (p. 396):

"The proposition that because a suit for a tax of one year is a different demand from the suit for a tax for another, therefore res judicata can not apply, whilst admitting in form the principle of the things adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies."

This is not the rule in a number of the States. *City of Newport* v. *Commonwealth*, 106 Ky. 434; *Louisville Bridge Co.* v. *City of Louisville*, 81 Ky. 189; *Bank* v. *Memphis*, 101 Tenn. 154; *State* v. *Bank*, 95 Tenn. 221, 231; *Georgia Railroad & Banking Co.* v. *Wright*, 124 Ga. 596, 603; *Michigan Southern, etc. R. R.* v. *People*, 9 Mich. 448, 450; *L. S. & M. S. R. R.* v. *People*, 46 Mich. 193, 208; *C. B. & Q. R. R.* v. *Cass County*, 72 Neb. 489, 491; *Adams* v. *Yazoo & Miss. R. R.*, 77 Miss. 194, 266; *State* v. *American Sugar Refining Co.*, 108 La. 603. Judge Cooley in his work on Taxation (8th ed.) says at pages 2648-9 that the State Courts, differing from this Court, do not generally regard an adjudication as to taxes for one year as making the decision of the supporting points *res judicata* for the following years.

We have held that where in a federal court a judgment of a state court in a tax case is pleaded in a subsequent tax case arising in a federal court, the estoppel from the judgment of the state

court will not be given greater effect than it would have in the state court and that a judgment not operating as *res judicata* in suits for taxes for another year in the state court will not be an estoppel in a federal court for subsequent years. *Phoenix Fire and Marine Insurance Company* v. *Tennessee*, 161 U. S. 174; *Covington* v. *First National Bank of Covington*, 198 U. S. 100.

The question here differs from that presented in ordinary tax suits, and involves the effect of an adjudication of a peculiar character. Prior to the passage of the McKinley Tariff Administrative Act, approved June 10, 1890 (c. 407, 26 Stat. 131, 136, sec. 12), litigation over the collection of duties and the classification of importations under tariff acts was carried on by suits against the collectors who imposed the duties and was in the form of an action against the collecting official as an individual. After the judgment was obtained, the collecting officer was relieved from personal obligation and the judgment was paid from the Treasury of the United States. See U. S. Rev. Stat., secs. 3009-3014. In 1890 new machinery was introduced by which a board of nine general appraisers was created which, sitting in divisions of three, constituted in a sense administrative courts of appeals to pass on questions of classification and the imposition of duties, and appeals were allowed from it to the proper circuit court of the United States, whence upon an allowance of an appeal by the circuit court, the cases came to this Court. By the Act of 1891, creating circuit courts of appeal, (26 Stat. 826, c. 517, sec. 6) these cases went by appeal to those courts, and then by certiorari to this Court. By the Tariff Act of August 5, 1909 (36 Stat. 11, 105, sec. 29), another change was made by which appeals from the decisions of the Board of General Appraisers were allowed to a new court created by the act, called the Court of Customs Appeals, and by that act the whole question of classification and refunding of duties was taken out of the jurisdiction of the regular federal judiciary. The classification by the Court of Customs Appeals was made final, and no appeal was granted to this Court. This independent plan for the settlement of tariff questions and the complete finality of the decisions of the Court of Customs Appeals in that field of litigation lasted until August, 1914, when by the Act of August 22 of that year (c. 267, 38 Stat. 703) a limited review by writ of certiorari was given to this Court of

judgments of the Court of Customs Appeals in cases in which the construction of the Constitution or any part thereof or any treaty made pursuant thereto was drawn in question, and in any other case when the Attorney General of the United States should, before the decision of the Court of Customs Appeals was rendered, file with the Court a certificate that the case was of such importance as to render expedient its review by this Court. For five years, however, the Board of General Appraisers and the Court of Customs Appeals between them exercised complete jurisdiction in the construction of tariff acts and the determination of the amount due as duties from every importation coming into the country. By the Act of 1909 (36 Stat. 105) the court was given power "to establish all rules and regulations for the conduct of the business of the Court and as might be needful for the uniformity of decisions within its jurisdiction as conferred by law." It was by the law to exercise exclusive appellate jurisdiction in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith and all appealable questions to the jurisdiction of the Board of General Appraisers and all appealable questions as to the laws and regulations governing the collection of the customs revenues, and the judgment or decrees of said Court of Customs Appeals were made final in all such cases. (p. 106). It was thus for five years put in a position where it must not only make its own rules but it must determine, as a practical matter, what should be the conclusive effect of its own judgments in the determination of questions of fact and statutory construction and classification in subsequent cases brought before them by the same parties and presenting similar issues. In the exercise of this jurisdiction, it established the practice that the finding of fact and the construction of the statute and classification thereunder as against an importer was not *res judicata* in respect of a subsequent importation involving the same issue of fact and the same question of law.

In *Beuttell & Sons* v. *United States*, 8 U. S. Court of Customs Appeals Reports, 409, the question was whether machine-made Wilton rugs were dutiable under par. 300 of the Tariff Act of 1913, or under par. 294 by virtue of par. 303 of that act. In delivering the opinion of the Court Judge Barber, who has been a member of the court since its organization, in 1909, used this language:

"At the outset it should be noted that the precise issue here has been here before and decided by this court in Beuttell & Sons *v.* United States (7 Ct. Cust. Appls., 356; T. D. 36905). The Government, being of opinion that such issue, which was there decided adversely to its contention, ought again to be here considered, and following a recognized practice in customs litigation, has made up a new record, which for practical purposes results as a retrial of the former case."

It is clear that this has been the practice since the beginning of the court. See *Stone & Downer Co.* v. *United States*, 4 U. S. Court of Customs Appeals, 47. In *United States* v. *Hearst Company*, 49 Treasury Decisions, 854, T. D. 41584, the court said:

"Precisely the same kind of merchandise was under consideration in Hearst & Company *v.* United States, 12 Court of Customs Appeals, 81; T. D. 40021. The record of the evidence in that case is incorporated in this, and it is agreed that this case is, in effect, a retrial of the issues involved in that upon additional testimony introduced on behalf of the government, none having been offered by it in the earlier case."

Provision for just such rehearings was made in the rules of procedure and practice adopted by the Board of General Appraisers (35 Treasury Decisions, 113, Rule 22) as follows:

"Where a question of the classification of imported merchandise is under consideration for decision by any one of the boards and the decision has been previously made involving the classification of goods of substantially the same character, the record and testimony taken in the latter case may, within the discretion of the board, be admitted as evidence in the pending case on motion of either the Government or the importer or on the board's own order: Provided, That either party may have any one or more of the witnesses who testified in such case summoned for re-examination or cross-examination as the case may be. The rule shall, furthermore, apply to the printed records which may have been acted on by the courts in the case of appeals taken from the decisions of the board."

There would seem to be an analogy between the proper respect of this Court for the conclusion of the Court of Customs Appeals upon the question of the estoppel of its own decisions when it was an independent court not subject to review by this Court, and our respect for judgments of the state courts in limiting the application of the estoppel of their decisions in tax cases, and unless some controlling reason exists why we should overrule the established practice in this matter of the Court of Customs Appeals,

now that the power of review of some of its judgments has bee given us, we should follow it.

We think that not only was it within the power of the Court o Customs Appeals to establish the practice but that it was wise t do so. The effect of adjudicated controversies arising ove classification of importations may well be distinguished from th irrevocable effect of ordinary tax litigation tried in the regula courts. There of course should be an end of litigation as well i customs matters as in other tax cases, but circumstances justify limiting the finality of the conclusion in customs controversies t the identical importation. The business of importing is carried o by large houses between whom and the Government there are in numerable transactions, as here for instance in the enormous im portations of wool, and there are constant differences as to prope classifications of similar importations. The evidence which may b presented in one case may be much varied in the next. The impor tance of a classification and its far-reaching effect may not have bee fully understood or clearly known when the first litigation was car ried through. One large importing house may secure a judgment i its favor from the Customs Court on a question of fact as to the mer chandise of a particular importation or a question of construction i the classifying statute. If that house can rely upon a conclusion i early litigation as one which is to remain final as to it and not to b reheard in any way, while a similar importation made by another importing house may be tried and heard and a different conclusion reached, a most embarrassing situation is presented. The import ing house which has by the principle of the thing adjudged ob tained a favorable decision permanently binding on the Government will be able to import the goods at a much better rate than that enjoyed by other importing houses, its competitors. Such a result would lead to inequality in the administration of the customs law, to discrimination and to great injustice and confusion. In the same way, if the first decision were against a large importing house, and its competitors instituted subsequent litigation on the same issues with new evidence or without it, and succeeded in securing a different conclusion, the first litigant, bound by the judgment against it in favor of the Government must permanently do business in importations of the same merchandise at great and inequitable disadvantage with its competitors.

These were doubtless the reasons which actuated the Court of Customs Appeals when the question was first presented to it to hold that the general principle of *res judicata* should have only limited application to its judgments. These are the reasons, too, why the principle laid down by this Court in the decision already referred to, in *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, should not apply or control. There the thing adjudged was the existence of an immunity of the property of a bank from taxation due to a contractual obligation of the state or city government to the bank, a personal relation which might without embarrassment and with much more safety be permanently fixed for one tax payer than a question of fact or law affecting discriminatingly one of a whole class of importers and giving the exceptional operation in its favor of a general tariff on articles of merchandise largely imported. The fact that objection to the practice has never been made before in the history of this Court or in the history of the Court of Customs Appeals in eighteen years of its life is strong evidence not only of the wisdom of the practice but of general acquiescence in its validity. The plea of *res judicata* can not be sustained in this case.

Second question. Paragraph 18 of the Emergency Tariff Act of May 27, 1921, c. 14, 42 Stat. 9, 10, under which the wool was classified for duty herein is as follows:

"Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. . . ."

Paragraph 19 is as follows:

"Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law."

The respondents claim, and the Court of Customs Appeals held, that all but one of these importations in the fleece were entitled to free entry under paragraph 650 of the free list of the Tariff Act of October 3, 1913, c. 16, 38 Stat. 114, 164, as follows:

"650. Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. . . ."

and that yarn of the importations was dutiable only under par. 287, p. 142, as follows:

"287—Yarns made wholly or in chief value of wool, 18 per centum ad valorem."

Wool clothing is made from wool yarn prepared either by the carding process or by the combing process. The adaptability of the raw wool for one or the other is determined chiefly by the length of the staple, so that wools used for clothing are often described in the trade as short wools or long wools. The exact question is whether section 18 includes in the term clothing wool, long staple or combing wool as well as short staple or carding wool. They are both used in clothing. Carpet wools are ordinarily not used for clothing. They are generally too coarse for that purpose but are well adapted and generally used for the making of carpets. They are not grown in the United States, so that there is no motive for putting a tariff on them to protect domestic growers or the home markets.

In the case between the same parties presenting the same issues in 1923 the Board of General Appraisers by a majority of two to one gave judgment for the Government. *Stone & Downer Co.* v. *United States*, 43 Treasury Decisions, 141, T. D. 39473. One held that the words "wool commonly known as clothing wool" must be given their ordinary non-trade meaning of wool used for clothing and therefore included both carding and combing wools. His view was that evidence of the technical or commercial meaning of clothing wool was not relevant and was excluded by the words "commonly known as". The other General Appraiser supporting the government view, examined the evidence at length and found from it that the first great division among wools was between clothing wools and carpet wools, and that while in the trade, clothing wools were divided into and were distinguished commercially as clothing wools and combing wools, the expression "commonly known as clothing wool" as testified by competent witnesses of large experience, included wool for clothing whether treated by the carding or combing process.

The Customs Court on appeal held that if there was a trade term to determine classification under a tariff act, the overwhelming weight of authority showed that it must prevail over the ordinary meaning if different, and that under this rule of construction cloth-

ing wool was wool used in the carding process as distinguished from that used in the combing process in the making of cloth. *Stone & Downer Co.* v. *United States*, 12 Court of Customs Appeals Reports, 62.

When the case now in hearing came before the Board of General Appraisers, the Board unanimously gave judgment for the importers, following the previous judgment of the Court of Customs Appeals on the same issues in the case presented in 1923, and this action was affirmed by the Court of Customs Appeals. *United States* v. *Stone & Downer Co.*, 12 Court of Customs Appeals Reports, 557. The record contains all the evidence in the first case, and the new evidence introduced by the Government in the second case, in accord with Rule XXII of the Board of General Appraisers, already referred to.

In this case, as in every other involving the interpretation of a statute, the intention of Congress is an all important factor. The greatest light is thrown on that intention in this case by an examination of the existing conditions and the anticipated evils against which by this legislation Congress sought to protect the country.

When the Emergency Tariff Act was passed we had been through the greatest war of history and were attempting to return to peace conditions, and had reached a time in 1920 when business was bad and financial disaster threatened. The result of the Congressional elections in November, 1918, was to change the political complexion of the House and Senate. Before that Congress finished its term in the winter of 1920-1921, an emergency tariff bill was introduced to relieve the agricultural depression which was at hand. Such a bill went through Congress but was vetoed. The National administration changed on the succeeding 4th of March, 1921. With a new Congress and new Executive, another emergency tariff bill like the one already vetoed was introduced. The Committee on Ways and Means of the new House of Representatives in recommending the passage of the bill (1 House Reports, 67th Congress, 1st Session, page 1), commented on the serious obstacles to the revival of industry in the paralysis of agriculture. It pointed out, that the purchasing power of the farmers had been in large part destroyed and must be restored; called attention to the fact that we were in the grip of a nation wide industrial and business depression and that agriculture was hardest hit.

Coming then to the subject of wool as one of the agricultural products needing legislative aid, the report said:

"(1) In previous years the average production of wool in the United States was 314,000,000 pounds and average inports 203,000,000 pounds.

"During the war imports increased in response to increased manufacturing to about 445,893,000 pounds in 1919, and declined to 259,618,000 pounds in 1920.

"(2) Both importation and consumption of wool have decreased since May. However, there has been a large increase for January and February, 1921. Importations in recent months appear to be speculative, in anticipation of tariffs.

"(3) The stocks of wool on hand were large when the price slump came last May. To the stocks on hand was added the new clip of 280,000,000 pounds.

"(4) The accompanying tables show the wool supply in sight to be near 1,000,000,000 pounds. The normal consumption is about 600,000,000 pounds, with about 400,000,000 pounds carried as stock. A year's supply is in sight at normal consumption. At the present rate of consumption (about two-thirds normal) the supply would be sufficient for a year and a half.

"(5) The effect of an embargo or high tariff would be to gradually increase the prices.

"The justification for an emergency tariff is:

"(a) A fundamental industry that it takes years to develop is facing ruin.

"(b) The prosperity of large numbers of people, not sheep growers, is dependent on the sheep industry. Hence, merchants and bankers who have made large advances to sheep producers are in serious financial trouble and favor a wool tariff.

"(c) At present the supply of wool in the United States is approximately 650,000,000 pounds, of which 175,000,000 pounds is held by the producers. With the coming 1921 wool clip the amounts controlled by producers would be approximately 450,000,000 pounds while the dealers would hold approximately 500,000,000 pounds. Therefore, the benefit derived from a tariff would be equally divided between producers and the dealers and manufacturers. Undoubtedly any tariff on wool would reflect in the price of finished goods and the charge passed on to the consumer.

"(d) Wool dealers who purchased wool stocks at higher prices than now obtain are in serious financial straits and would be directly benefited. Forced liquidation on the part of wool dealers would make the present bad situation worse and break a trade organization of value to agriculture.

"(e) It can be shown that the price of wool is so small a factor in the ultimate cost of manufactured goods that no large burden need be placed on the consuming public."

The same report was adopted without change by the Finance Committee of the Senate in recommending the bill to that body. 1 Senate Reports, 67th Congress, 1st Session, page 6. The bill passed both Houses and was approved May 27, 1921.

The situation as set forth in the Ways and Means Report as to the wool market of the World in 1921 was confirmed in a pamphlet issued by the United States Tariff Commission at Washington in 1922, on "Recent Tendencies in the Wool Trade", in which it said (p. 1):

"For the pre-war years 1909 to 1913, inclusive, the world's annual production of raw wool averaged approximately 3,335,242,000 pounds, of which about 30 per cent. was carpet wools. Of this amount 587,350,000 pounds were produced in South America, 157,761,000 in South Africa, and 903,620,000 in Australasia, the three great exporting regions which supply the deficiencies *in production of clothing wools of western Europe and North America.* For 1921, world production is estimated at 2,770,852,000 pounds, of which the three exporting regions above mentioned are credited with 491,269,000 pounds, 127,177,000 pounds and 798,443,000 pounds, respectively, or a decline in these areas of 231,000,000 pounds from pre-war production." (The italics are ours.)

The Emergency Tariff Act, so designated by its terms, was Title I and part of the law of Congress of May 8, 1921, c. 14, which as a whole was entitled

"An Act Imposing temporary duties upon certain agricultural products to meet present emergencies, and to provide revenue; to regulate commerce with foreign countries; to prevent dumping of foreign merchandise on the markets of the United States; to regulate the value of foreign money; and for other purposes."

The Emergency Tariff Act imposed for the period of six months from the date of the Act, May 27, 1921, a tariff on the following articles: wheat, flour, flax seed, corn and maize, beans, peanuts, potatoes, onions, rice, lemons, vegetable oils, sheep, beef, veal, mutton and lamb, cotton and manufactures of cotton, in its paragraphs 18 and 19 on wool, on sugars, butter, cheese, milk, wrapper and filler tobacco, apples, cherries, olives.

Title II directed a dumping investigation into the question whether any industry of the United States is likely to be injured by dumping of foreign goods upon our markets at less than market value. It provided for a special dumping duty and a means of

determining what that should be, and it made that title the Anti-Dumping Act.

Title V provided for an increased duty in dyes and chemicals which title was to be known as the Dye and Chemical Control Act.

The whole act was directed to protecting the markets of the United States from being swamped by importations from abroad, and to increasing the revenue. Congress proposed to keep the wool market free from demoralization in the interests of the wool growers of the country, on the one hand, and the owners of wool stocks on hand in the country, on the other.

It was asserted in the argument on behalf of the Government, and the assertion was acquiesced in by counsel for the importers, that at least half in weight and value of the importations of wool from which clothing is made is combing wool. The contention of the importers in this case, if successful would therefore bring about the result that half, both in weight and in value of the foreign wool in competition with wool produced in the United States and with the stocks of wool on hand in the United States, would not be kept out of its markets by the Emergency Tariff at all, and that the swamping of the domestic wool markets to that extent would continue under the free importation of combing wools. More than this, such combing wools as would come in under the emergency tariff if construed as the Government contends would produce as much revenue as the carding wools and yet by the importers' construction, that revenue would be lost.

If the language of the statute is such that such results can not be avoided, of course it must be enforced accordingly. If Congress by its language has made a mistake, and so has failed in its purpose, this Court can not supply by its decision the omission of a necessary legislative provision to effect its purpose. With the intent of the Act clearly in mind, however, we must see whether it is true that the language used can only bear the construction insisted upon by the importers and upheld by the Court of Customs Appeals, or whether there is a broader and more reasonable construction that can be fairly placed upon the statute which will serve the plain Congressional purpose.

From the 500 pages of the evidence, we find that in the custom of the trade, the term "clothing wool" applies to the short staple wool which is suitable for carding and which goes into what is

known as the woolen or felting process for making cloths of that character, and that the term "combing wool" refers to wool of longer staple which goes into another process known as combing for making worsted cloths; that in the trade, clothing wool and combing wool are thus contrasted; second, that originally the worsted process could not be used with the fine wools like the merino wools, because the staple was not long enough; but that the development of combing machinery, particularly what is called the French combing process, has enabled manufacturers to comb wool of shorter staple than formerly, and to make it into worsteds and that in addition to this, cross breeding between the merino and other wools has increased the length of the staple and the amount of available combing wools as compared with the carding wools so that the border line between the use of combing wools for clothing and that of carding wool has changed; that the definitions in the principal dictionaries and encyclopedias set forth the same trade distinction between clothing wool and combing wool as between manufactures of wool, and manufactures of worsteds; that both clothing wool and combing wool are largely grown in this country.

The expert witnesses of the importers generally testified that there was no other meaning for clothing wool but carding wool. There was other substantial evidence, however, from expert witnesses for the Government of large experience in dealing in wool who testified that speaking generally, and in ordinary parlance, wools were divided into clothing wools and carpet wools with reference to their chief use, and that it was only in the trade in the grading and sorting of wools and in their purchase and sale that the term clothing wool was distinguished from combing wool. The competency and relevancy of such evidence as to the ordinary meaning of language in tariff classifications is sustained by the decision of this Court in *Robertson* v. *Salomon*, 130 U. S. 412, 415.

The natural and usual meaning of the words "clothing wool" is wool for clothing. That is what the non-expert reader of the words would understand until he was advised of a different meaning by reason of the language of the trade. When therefore the words are used "*commonly known as* clothing wools", the ordinary inference from the collocation of the words is that they refer to wool that is used in making clothing. If Congress had intended that the words "clothing wool" should have their commercial designation, it would simply have used the words without qualification or

it would have said "commercially known as". It would not have used the phrase "*commonly known as*". The phrase indicates not only that clothing wool is used in its ordinary or non-expert meaning, but is to serve the same purpose as the same phrase in connection with carpet wools in the same clause by indicating that while these wools were capable of use for other than clothing and carpets respectively, they were to be classified by reference to their chief use.

In the world view which the committee report shows clearly that the Congress was taking of the wool market, it was not dealing with the processes by which wool was made into cloth, and distinguishing between them. If it had wished to make a distinction based on the process of manufacture rather than on the material which was to be used, it certainly would not have included, as expressly within the operation of paragraph 18, the hair of the camel, the angora goat and the alpaca, for in preparing those materials for the making of cloth the hair is always combed and never carded. It had chiefly in mind, as shown by the contrast made in section 18, the distinction between wool which was made into carpets and could not be grown in the United States, and wool made into clothing which could be, and was, grown in the United States and in England and on the continent and in South America, Australasia and South Africa. The world view of the production of wools which affected Congress in enacting this legislation is also revealed in the passage from the Tariff Commission report which we have already quoted, when it refers to South America, South Africa and Australasia as "the three great exporting regions which supply the deficiencies in production of clothing wools of western Europe and North America." This use of the words "clothing wools" of course is used only in contrast to the carpet wools which together with the clothing wools embrace the whole world production. We do not find it difficult therefore in our interpretation of paragraph 18 to give effect to the evident purpose of Congress.

We are confronted by counsel for the importers with the language to be found in many of our own cases giving controlling effect in classification of merchandise for duty in tariff acts to trade terms and commercial usage. It is these cases also upon which the Court of Customs Appeals relied in reaching its conclusion. Their principle has nowhere been more strongly stated

than by Mr. Justice Gray in the case of *Cadwalader* v. *Zeh*, 151 U. S. 171, 176:

"It has long been a settled rule of interpretation of the statutes imposing duties on imports, that if words used therein to designate particular kinds or classes of goods have a well known signification in our trade and commerce, different from their ordinary meaning among the people, the commercial meaning is to prevail, unless Congress has clearly manifested a contrary intention; and that it is only when no commercial meaning is called for or proved, that the common meaning of the words is to be adopted."

This statement is supported by a long line of authorities, one of which is *Robertson* v. *Saloman*, 130 U. S. 412, 415, in which Mr. Justice Bradley used the following language:

"The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws. See Arthur v. Lahey, 96 U. S. 112, 118; Barber *v.* Schell, 107 U. S. 617, 623; Worthington *v.* Abbott, 124 U. S. 434, 436; Arthur's Executors *v.* Butterfield, 125 U. S. 70, 75. But if the commercial designation fails to give an article its proper place in the classification of the law, then resort must necessarily be had to the common designation."

What we hold here is that Congress by using the expression "commonly known as clothing wool" indicated expressly its intention not to give to the expression "clothing wool" the commercial designation that it has when used in contrast with combing wool, and that the history of the legislation shows that the trade or commercial meaning is contrary to the purpose of Congress in the enactment of the law. In other words, the authorities upon which the Court of Customs Appeals proceeded we think have no application to the interpretation of this act save as they recognized that in the last analysis effect must be given to the intention of Congress.

It should be noted that the tariff division of wools in 1867 was of three classes. Class 1—Clothing wool, wools which are of merino blood and wools of like character. Class 2—Combing wool, wools which are of the English blood; and the hair of the alpaca, goat and animals. Class 3—Carpet wools and other similar wools. These divisions were continued in the Tariff Act of 1883. In the Tariff Act of 1890 and in the Act of 1897, when the duties on wool were restored after the free wool of the Tariff Act of 1894, the division was made into three classes, while the tariff divisions be-

tween clothing and combing wools were dropped. Again in the Act of 1909 there was a division of three classes without reference to the trade division between clothing and combing wools.

There may have been other reasons for this change in the acts of 1890, 1897 and 1909, but there were two, already referred to, which were obvious, one arising from the cross breeding of sheep so that the staple in the merino and like wools was lengthened thereby (see par. 380 of the McKinley Act, c. 1244, 26 Stat. 595), and the other in the improvement in the combing process so that short wools of the merino blood which before could only be carded and not combed became combing wools in the trade sense and could be used for worsteds as well as for woolen cloths. The merino wools were finer wools, and as they became subject to combing by breeding and mechanical process, their use in making clothing was enlarged and their value was enhanced. See Report of the Tariff Commission on the Wool Growing Industry 1921—pages 428, 448. The result of these changes was that the first class of wools in the acts of 1890, 1897 and 1909 included many combing wools, while the first class under the Act of 1883 was expressly designated as clothing wools. This is illustrated in this case in which the wools here imported are partly merino wools by the blood and come from South America, and yet twelve of the importations out of thirteen are combing wools, while the thirteenth was declared doubtful by the experts and was held to be a clothing wool by the Court of Customs Appeals.

A similar change after 1890 took place in the lessening of importance from a tariff standpoint of the trade distinction between manufactures of wool the product of carding wool and manufactures of worsted the product of combing wool, for while the names of woolens and worsteds were retained in the tariff acts from 1890 on, these were usually classified together for the same duty.

In holding as we do in this case that the plain purpose of Congress requires the interpretation of the words in their ordinary rather than their commercial or trade meaning, we find full support in a case which was not cited in the opinions of the courts below or in the briefs of counsel on either side. We refer to the case of *United States* v. *Klumpp*, 169 U. S. 209. That case turned on paragraph 297 of the Wilson-Gorman Tariff Act of 1894, 28 Stat. 509, c. 349, passed in Mr. Cleveland's administration, to take the place of the McKinley Tariff Act of 1890, 26 Stat. 567, c. 1244. The

new Act applied to all imports from the date of its passage, August 27, 1894, except merchandise covered by paragraph 297 which read as follows:

"The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five."

The contention of the Government in that case which both the District Court and the Circuit Court of Appeals had upheld, *Murphy* v. *United States* (68 Fed. 908, 72 Fed. 1008), was that under the language of the McKinley Act and the previous tariff acts for a great many years, manufactures of wool and manufactures of worsteds were separate subjects of importation and that paragraph 297 postponing the reduction of duties on manufactures of wool did not apply to manufactures of worsteds. It had been expressly decided by this Court in *Seeberger* v. *Cahn*, 137 U. S. 95, 97, that cloths popularly known as diagonals and in the trade as worsteds were subject to duty under the Act of March 3, 1883, as manufactures of worsteds and not as manufactures of wool. It was admitted that the merchandise in controversy was worsted dress goods made from the fleece of the sheep which had been combed and spun into worsted yarn and paid a high duty under the McKinley Act. By the Act of May 9, 1890, it was provided that worsted cloths should be classified as, and with, woolen cloths, 26 Stat. 105, c. 200. That, however, seems to have been repealed by the McKinley Act (*Murphy* v. *United States*, 72 Fed. 1008, 1009, but though the words wool and worsted continued to be used separately throughout the McKinley Act in description of the various materials for dress goods, they were classified together for duties. There was no doubt about the commercial or trade meaning of manufactures of wool as distinguished from manufactures of worsteds, a distinction which exists today in all woolen and clothing markets. This Court however in view of the evident purpose of Congress in the paragraph in question, found that there was no imperative ground for the reinstatement of that trade distinction between manufactures of wool and those of worsted, in construing paragraph 297, although the two terms continued to be used separately in the McKinley and in the new Act of 1894. Referring to paragraph 297 and its words "Manufactures of Wool", the Court said (p. 215):

"The reason for the postponing of the taking effect of the reduction of duties obviously had nothing to do with the process of

manufactures, but related to the material of which the goods were composed, which material had been relieved from duty by paragraph 685 of the act. Congress undoubtedly concluded that the manufacturers of goods from wool had laid in a large stock of material, which equitably they should be allowed a reasonable time to work off, and that there was probably on hand a large stock of goods, to dispose of which reasonable time should be allowed, rather than that the large dealers should be induced to bring in foreign goods at a cost which involved ruinous competition; while at the same time the wool growers ought to have their original market until they could adjust themselves to the new condition of things.

"The specific rate was compensatory, and, when stricken out, and the duty on raw material abolished, a postponement was provided for in order to avoid injustice. But the reason for postponing the reduction on manufactures of wool, which, on the face of the act, we think properly imputable to Congress, is as applicable to worsted goods as to any other goods fabricated from wool."

And the opinion concludes:

"We think that the words 'manufactures of wool', in paragraph 297, had relation to the raw material out of which the articles were made, and that as the material of worsted dress goods was wool, such goods fell within the paragraph."

We think the *Klumpp* case very like the one at bar. They both consider the same trade distinction between different clothing wools growing out of the different processes used in the manufacture of the yarn and reject its application because of Congress's purpose. In both cases the trade distinctions had ceased to be important from a tariff standpoint, and classification was made on a different basis from that of carding or combed wools or woolen cloth and worsted cloth. The trade distinctions were very important in the transaction of business, but not in the fixing of duties.

This Court was able, from the language and the circumstances in the *Klumpp* case, as it is here, to determine what the purpose of Congress was in the use there of the words "manufactures of wool", as in the words here, "wool commonly known as clothing wool." Seeing clearly that purpose, this Court held, in the *Klumpp* case, as it holds here, that the case came within the exception to the general rule for the use of trade terms in interpreting tariff acts. The exception was stated by Mr. Justice Gray in *Cadwalader* v. *Zeh*, *supra*, that "the commercial meaning is to prevail unless Congress has clearly manifested a contrary opinion, and

that it is only when no commercial meaning is called for or proved that the common meaning of the words is to be adopted''; and by Mr. Justice Bradley in *Robertson* v. *Salomon, supra,* where he says, after stating the general rule, ''but if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation.'' In other words, the pole star of interpretation of statutes, whether it be of tariff acts or any other, must be the intention of Congress when that can be clearly ascertained and is reasonably borne out by the language used.

Neither in the briefs presented to us nor in the opinions of the courts below has there ever been a suggestion of a reason why Congress should have distinguished, in its attempt to avoid the demoralization of the wool markets in this country and to increase the revenue, between carding wool and combing wool. The only argument of the Court of Customs Appeals is *ita lex scripta est,* and the answer to the argument must be that it is not so written and that the language is easily capable of being construed in accordance with the Congressional intention.

What we have said leads to the conclusion that we must reverse the Court of Customs Appeals, except in respect to its ruling on the 13th importation, which it classified as within paragraphs 18 and 19,

And it is so adjudged.

Mr. Justice McReynolds is unable to discern any satisfactory answer to the forceful opinion by the Circuit Court of Appeals and thinks that its judgment should be affirmed. In his view, they rightly accepted the statute as written by Congress; the contrary course would have required them to usurp the functions of a legislator and dissert those of an expounder of the law.

Nearly one hundred years ago Mr. Justice Story announced the fundamental doctrine which no court should forget. ''Arguments drawn from impolicy or inconvenience ought here to be of no weight. The only sound principle is to declare, *ita lex scripta est,* to follow, and to obey. Nor, if a principle so just and conclusive could be overlooked, could there well be found a more unsafe guide in practice than mere policy and convenience.''